Federal Register

10–25–05 Tuesday
Vol. 70 No. 205 Oct. 25, 2005

Pages 61547–61712

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, October 25, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 205

Tuesday, October 25, 2005

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund program:
Hazardous substances priority list (toxocological profiles), 61622–61623

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Telephone Bank

Air Force Department
NOTICES
Senior Executive Service Performance Review Board; membership, 61607

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
FMD region meat cured or cooked in another region, 61578–61580

Appalachian States Low-Level Radioactive Waste Commission

NOTICES
Meetings, 61600

Army Department
PROPOSED RULES
Privacy Act; implementation, 61589–61590
NOTICES
Privacy Act; systems of records, 61607–61608

Centers for Disease Control and Prevention
NOTICES
Meetings:
Childhood Lead Poisoning Prevention Advisory Committee; correction, 61623–61624

Coast Guard
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61626–61628
Meetings:
Merchant Marine Personnel Advisory Committee, 61628

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

Defense Department
See Air Force Department
See Army Department
NOTICES
Meetings:
U.S. Strategic Command Strategic Advisory Group, 61606–61607

Drug Enforcement Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61644–61645

Education Department
NOTICES
Privacy Act; systems of records, 61608–61609

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Barrett Business Services, Inc., 61647
Burlington Industries LLC, 61646
Canteen Services, 61647
Cequent Consumer Products, 61646
Cone Mills Corp., 61647
Edward Fields, Inc., 61647–61648
Henkel Corp., 61647
Microtek Medical, 61648
Nidec America Corp., 61648–61649
Nu-Gro Technologies, Inc., 61649

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Southwestern Power Administration
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Fernald Site, OH, 61609–61610
Idaho National Engineering and Environmental Laboratory, 61610
Oak Ridge Reservation, TN, 61610–61611
Natural gas exportation and importation:
Transalta Energy Marketing Corp. et al., 61611–61612

Energy Efficiency and Renewable Energy Office
RULES
Consumer products and commercial and industrial equipment; energy conservation and efficiency programs:
Energy conservation standards; technical amendment Correction, 61698
NOTICES
Meetings:
State Energy Advisory Board, 61612

Environmental Protection Agency
RULES
Acquisition regulations:
Clause revisions, 61567–61571
Air quality implementation plans; approval and promulgation; various States:
California, 61561–61563
Colorado, 61563–61567
North Carolina, 61556–61561
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 61590–61591

NOTICES
Meetings:
National Drinking Water Advisory Council, 61614
National Pollution Prevention and Toxics Advisory Committee, 61614–61616
Superfund program:
Federal Agency Hazardous Waste Compliance Docket; Federal facilities; list update, 61616–61621

Federal Aviation Administration
RULES
Airworthiness directives:
Gippsland Aeronautics Pty. Ltd., 61547–61549
Rolls-Royce Corp., 61549–61552
Class E airspace, 61552–61553
PROPOSED RULES
Airworthiness directives:
Cessna, 61580–61583
Class E airspace, 61583–61589
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 61683
Passenger facility charges; applications, etc.:
MCI and Charles B. Wheeler Downtown Airport, MO, 61683–61684
Reports and guidance documents; availability, etc.:
Air carriers; wet lease policy guidance, 61684–61687

Federal Energy Regulatory Commission
NOTICES
Privacy Act; systems of records, 61612–61613

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 61621
Formations, acquisitions, and mergers, 61621
Permissible nonbanking activities, 61621

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Birmingham/University of Alabama Activity Centers, AL; transit improvement project, 61687–61689

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
California tiger salamander, 61591–61595

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61624–61625
Meetings:
Pharmaceutical Science Advisory Committee, 61625

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Ravalli County, 61600

Geological Survey
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61630

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Public Affairs, 61621–61622

Health Resources and Services Administration
NOTICES
Meetings:
Infant Mortality Advisory Committee, 61625–61626
Nurse Education and Practice National Advisory Council, 61626
Organ Transplantation Advisory Committee, 61626

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61628–61629
Privacy Act; computer matching programs, 61629–61630

Industry and Security Bureau
NOTICES
Meetings:
Information Systems Technical Advisory Committee, 61601

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Minerals Management Service
See National Park Service
See Reclamation Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61693–61694
Committees; establishment, renewal, termination, etc.:
Tax Exempt and Government Entities Advisory Committee; membership, 61694–61695

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 61601–61602
Countervailing duties:
Brass sheet and strip from—
France, 61604–61605
Applications, hearings, determinations, etc.:
Areas Global TB Vaccine Foundation, 61602–61603
California Institute of Technology et al., 61603
Princeton University, 61603
State University of New York et al., 61603–61604

Justice Department
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61645

Labor Department
See Employment and Training Administration
See Veterans Employment and Training Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61645–61646

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
CRYSTAL SPIRIT, 61689–61690
DAY DREAMER, 61690

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Marine mammals and threatened and endangered species protection; lessee plans and information submission requirements; comment period extension, 61589
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61631–61640

National Institute of Standards and Technology
NOTICES
Inventions, Government-owned; availability for licensing, 61605
Meetings:
Malcolm Baldrige National Quality Award Judges Panel, 61606

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic surfclam and ocean quahog, 61577
PROPOSED RULES
Environmental statements; notice of intent:
Western Pacific Fishery Management Council, 61595–61596
Meetings:
Western Pacific Fishery Management Council, 61597–61599
NOTICES
Endangered and threatened species permit determinations, etc., 61606

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission; correction, 61640
Kaloko-Honokohau National Historical Park Advisory Commission, 61641
National Capital Memorial Advisory Commission, 61641
National Park Subsistence Resource Commission, 61641–61642
National Preservation Technology and Training Advisory Board, 61642
National Register of Historic Places; pending nominations, 61642–61644

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Air Force Department, Nellis Air Force Base, NV, 61649–61651
AmerGen Energy Co., LLC, 61651–61654
Meetings; Sunshine Act, 61654–61655
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 61655–61669

Pipeline and Hazardous Materials Safety Administration
RULES
Pipeline safety:
Gas and hazardous liquid pipelines direct assessment standards, 61571–61577
NOTICES
Meetings:
Pipeline Safety Advisory Committees, 61690–61691

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Shasta Lake Water Resources Investigation, CA, 61644

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 61600

Securities and Exchange Commission
PROPOSED RULES
Securities:
Client commission practices; interpretative guidance, 61700–61712
NOTICES
Meetings; Sunshine Act, 61669
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 61670–61671
Chicago Stock Exchange, Inc., 61671
New York Stock Exchange, Inc., 61672–61674
Pacific Exchange, Inc., 61675–61677

Social Security Administration
NOTICES
Social security benefits:
Cost of living increase, SSI monthly benefit amounts increase, average of total wages, contribution and benefit base, etc., 61677–61683

Southwestern Power Administration
NOTICES
Power rates:
Southwest Power Pool, et al., 61613–61614

State Department
RULES
Passports:
Electronic passport; definitions, validity, replacement, and expedited processing, 61553–61555
NOTICES
Meetings:
Shipping Coordinating Committee, 61683

Surface Transportation Board
NOTICES
Rail carriers:
Waybill data; release for use, 61691–61692
Railroad operation, acquisition, construction, control, etc.:
BNSF Railway Co., 61692

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration

See Federal Transit Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61692–61693

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61695–61696
Meetings:
Environmental Hazards Advisory Committee, 61696
National Research Advisory Committee, 61696
Prosthetics and Special Disabilities Programs Advisory Committee, 61696–61697
Special Medical Advisory Group, 61697

Veterans Employment and Training Service
NOTICES
Meetings:
President's National Hire Veterans Committee, 61649

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 61700–61712

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

9 CFR

Proposed Rules:

94 61578

10 CFR

430 61698
431 61698

14 CFR

39 (2 documents) 61547, 61549
71 61552

Proposed Rules:

39 61580
71 (4 documents) 61583, 61585, 61586, 61587

17 CFR

Proposed Rules:

241 61700

22 CFR

51 61553

30 CFR

Proposed Rules:

250 61589

32 CFR

Proposed Rules:

505 61589

40 CFR

52 (3 documents) 61556, 61561, 61563
81 61563

Proposed Rules:

52 61590

48 CFR

1504 61567
1509 61567
1529 61567
1536 61567
1537 61567
1552 61567

49 CFR

192 61571
195 61571

50 CFR

648 61577

Proposed Rules:

17 61591
660 (2 documents) 61595, 61597

Rules and Regulations

Federal Register

Vol. 70, No. 205

Tuesday, October 25, 2005

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22639; Directorate Identifier 2005–CE–48–AD; Amendment 39–14346; AD 2005–22–02]

RIN 2120–AA64

Airworthiness Directives; Gippsland Aeronautics Pty. Ltd. Model GA8 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Gippsland Aeronautics Pty. Ltd. (Gippsland) Model GA8 airplanes. This AD requires you to repetitively inspect the upper and lower grooves of the forward cargo door slide for cracks, excessive wear, and excessive width. This AD also requires you to replace the forward cargo door slide if any of the above conditions are found during any inspection. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. We are issuing this AD to prevent failure of the forward cargo door slide caused by cracks, excessive wear, or excessive width. This failure could result in the cargo door detaching from the airplane in flight, potentially causing damage by hitting the back end of the airplane.

DATES: This AD becomes effective on November 17, 2005.

As of November 17, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by November 25, 2005.

ADDRESSES: Use one of the following 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 20590–001.
- *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.

To get the service information identified in this AD, contact Gippsland Aeronautics, PO Box 881, Morwell, Victoria 3840, Australia; telephone: +61 (0) 3 5172 1200; facsimile: +61 (0) 3 5172 1201; e-mail: *support@gippsaero.com*.

To view the comments to this AD, go to *http://dms.dot.gov*. The docket number is FAA–2005–22639; Directorate Identifier 2005–CE–48–AD.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified FAA that an unsafe condition may exist on all Gippsland Model GA8 airplanes. The CASA reports that excessive wear in the slide of the forward cargo door was found during a routine inspection.

What is the potential impact if FAA took no action? If not prevented, cracks, excessive wear, or excessive width in the forward cargo door slide could cause the door slide to fail. This failure could result in the cargo door detaching from the airplane in flight, potentially causing damage by hitting the back end of the airplane.

Is there service information that applies to this subject? Gippsland has issued Mandatory Service Bulletin No. SB–GA8–2005–23, Issue 2, dated September 13, 2005.

What are the provisions of this service information? The service bulletin specifies repetitively inspecting the forward cargo door slide for cracks, signs of excessive wear, and excessive width. The service bulletin also specifies replacing the forward cargo door slide with a new cargo door slide, part number GA8–521022–149, if any of the above conditions are found during any inspection.

What action did the CASA take? The CASA classified this service bulletin as mandatory and issued Australian AD Number AD/GA8/3, dated September 27, 2005, to ensure the continued airworthiness of these airplanes in Australia.

Did the CASA inform the United States under the bilateral airworthiness agreement? These Gippsland Model GA8 airplanes are manufactured in Australia 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.

Under this bilateral airworthiness agreement, the CASA has kept us informed of the situation described above.

FAA's Determination and Requirements of This AD

What has FAA decided? We have examined the CASA's findings, reviewed all available 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.

Since the unsafe condition described previously is likely to exist or develop on other Gippsland Model GA8 airplanes of the same type design that are registered in the United States, we are issuing this AD to prevent failure of the forward cargo door slide caused by cracks, excessive wear, or excessive width. This failure could result in the cargo door detaching from the airplane in flight, potentially causing damage by hitting the back end of the airplane.

What does this AD require? This AD requires you to repetitively inspect the upper and lower grooves of the forward cargo door slide for cracks, excessive wear, and excessive width. This AD also requires you to replace the forward cargo door slide if any of the above

conditions are found during any inspection.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–22639; Directorate Identifier 2005–CE–48–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD.

Using the search function of our docket Web site, anyone can find and read the comments received into 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.). This is docket number FAA–2005–22639; Directorate Identifier 2005–CE–48–AD. 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*.

Are there any specific portions of this AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? 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 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22639; Directorate Identifier 2005–CE–48–AD'' in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–22–02 Gippsland Aeronautics Pty. Ltd.: Amendment 39–14346; Docket No. FAA–2005–22639; Directorate Identifier 2005–CE–48–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on November 17, 2005.

Are Any Other ADs Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model GA8 airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. We are issuing this AD to prevent failure of the forward cargo door slide caused by cracks, excessive wear, or excessive width. This failure could result in the cargo door detaching from the airplane in flight, potentially causing damage by hitting the back end of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Do the following: (i) Inspect the upper and lower grooves of the forward cargo door slide for cracks and excessive wear; and (ii) Measure the width of the grooves to ensure the grooves are no more than 0.145 inches in width (excessive width).	Initially within the next 20 hours time-in-service (TIS) after November 17, 2005 (the effective date of this AD). Repetitively thereafter at intervals not to exceed 100 hours TIS.	As specified in Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2005–23, Issue 2, Date of Issue: September 13, 2005.
(2) If any crack, excessive wear, or excessive width is found during any inspection required in paragraph (e)(1) of this AD, replace the door slide with a new door slide, part number GA8–521022–149.	Replace before further flight after the inspection in which the damage is found. After the replacement, continue with the repetitive inspections required by paragraph (e)(1) of this AD.	As specified in Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2005–23, Issue 2, Date of Issue: September 13, 2005.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Australian AD Number AD/GA8/3, dated September 27, 2005, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2005–23, Issue 2, Date of Issue: September 13, 2005. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Gippsland Aeronautics, PO Box 881, Morwell, Victoria 3840, Australia; telephone: +61 (0) 3 5172 1200; facsimile: +61 (0) 3 5172 1201; e-mail: *support@gippsaero.com.* To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2005–22639; Directorate Identifier 2005–CE–48–AD.

Issued in Kansas City, Missouri, on October 18, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21176 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20742; Directorate Identifier 2005–NE–03–AD; Amendment 39–14347; AD 2005–22–03]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 501–D22A, 501–D22C, and 501–D22G Turboprop Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Corporation (RRC) (formerly Allison Engine Company) 501–D22A, 501–D22C, and 501–D22G turboprop engines. This AD requires a onetime inspection for proper metal hardness of certain 1st stage, 2nd stage, 3rd stage, and 4th stage turbine wheels. This AD results from a report of a turbine wheel found to be over dimensional limits, caused by improper metal hardness. We are issuing this AD to prevent uncontained turbine wheel failure, leading to damage of the airplane and total loss of engine power.

DATES: This AD becomes effective November 29, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 29, 2005.

ADDRESSES: Contact Rolls-Royce Corporation, P.O. Box 420, 2001 South Tibbs Avenue, Indianapolis, IN 46206–0420; telephone (317) 230–2000; fax (317) 230–4020 for the service information identified in this AD.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7870; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Rolls-Royce Corporation (RRC) (formerly Allison Engine Company) 501–D22A, 501–D22C, and 501–D22G turboprop engines. We published the proposed AD in the **Federal Register** on March 29, 2005 (70 FR 15784). That action proposed to require a onetime inspection for proper metal hardness of certain 1st stage, 2nd stage, 3rd stage, and 4th stage turbine wheels. That action proposed to do the inspection at the next shop visit of the engine or turbine module, but not to exceed 7,400 cycles-since-new of any 1st stage, 2nd stage, 3rd stage, or 4th stage turbine wheel.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

NPRM Work Hour Estimate Is Different Than Estimate in RRC Commercial Engine Bulletins

One commenter states that the NPRM work hour estimate of 0.5 hour per engine is different from the estimate in the RRC Commercial Engine Bulletins (CEBs) No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004. The CEBs state that the 0.5 hour for inspection is in addition to the time required to remove the wheel. The commenter received an estimate from a Rolls-Royce-authorized overhaul facility of 250 work hours to perform the wheel inspection, which includes turbine disassembly and reassembly. We disagree. We estimated the cost of compliance to be 0.5 hour based on the assumption that the turbine is disassembled for other reasons, notably for an overhaul. The 250 work hours are basic and unrelated to the onetime inspection required by this AD. We have clarified in this final rule that the 0.5 hour is for the onetime inspection for metal hardness, but we have not changed the total costs of compliance in the AD.

Airplane Designations Not on the Type Certificate

The same commenter states that in the Applicability paragraph of the proposed AD, the L–100–20 and L–100–30 airplane designations are not included on the type certificate. The commenter suggests that only the type certificated airplanes be listed. The commenter states that historically, the L–382E is also known as the L–100–20, and the L–382G is also known as the L–100–30. We agree. We have corrected the Applicability in the AD to list the type-certificated airplanes and put the other designations in parentheses, for reference.

The Term ''Shop Visit'' Needs Clarification

The same commenter states that in the Compliance paragraph of the proposed AD, the term ''shop visit'' needs clarification. The commenter asks if it is our intention to have the hardness test performed at the next visit to the engine shop, regardless of the extent of other work performed. The commenter feels that is not our intention. The commenter also cites the recommended compliance appearing in CEBs No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004. The commenter suggests that the Compliance paragraph be changed to require compliance with the hardness inspection on suspect turbine wheels based on whichever of the following events occurs first:

- Not to exceed 7,400 cycles-since-new;
- Before installation of a suspect turbine wheel onto the rotor;
- When the suspect turbine wheel is next accessed by rotor disassembly.

We disagree. We expect a ''shop visit'' to be a visit that results in a turbine wheel disassembly. The most common term is overhaul, but not all users request an overhaul from their supplier when a turbine module visits the shop. The type of service being sought is not relevant to the hardness inspection. What is relevant, is that you perform the inspection before 7,400 cycles-since-new. We have not changed the Compliance paragraph in the AD based on this comment.

Request To Clarify Where To Mark the Part

The same commenter requests that we change compliance paragraph (h) to allow the part to be marked after or near the end of the serial number. The commenter states that CEBs No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004, also specify the marking this way. The paragraph in the proposed AD instructs service personnel to mark the part after the serial number only. The commenter states there is not always adequate space to mark the part after the serial number. We disagree. The area suitable for marking is quite large, however RRC chose to use the words ''after or near'' to make sure the part is marked in a suitable place. We have not changed the AD based on this comment.

Request Clarification of When To Report Findings of Inspections

The same commenter requests clarification of when to report findings of inspections. The proposed AD requires reporting findings of inspections using the procedures specified in paragraph 2.E. of RRC CEBs No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004. Those procedures state that inspection results be reported to Rolls-Royce T56/501 Customer Support in compliance with this CEB (when done). ''When done'' does not specify a time frame for submitting the inspection results. Some people may interpret this as immediately and others at a later time. The commenter suggests we specify that the inspection findings be submitted within 30 days of the inspection completion. We agree. We have changed paragraph (i) of the AD to state to report findings of inspections within 30 days of inspection using the procedures specified in paragraph 2.E of RRC CEBs No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004.

Clarification of Compliance

As clarification, we have added wording to paragraph (g) of this AD, to state to install a serviceable turbine wheel. This change relates the compliance to the serviceable turbine wheel definition in paragraph (j) of this AD.

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 150 RRC 501-D22A, 501-D22C, and 501-D22G turboprop engines of the affected design in the worldwide fleet. We estimate that 150 engines installed on airplanes of U.S. registry are affected by this AD. We also estimate that it will take about 0.5 work hour per engine to perform the onetime inspection for proper metal hardness, and that the average labor rate is $65 per work hour. Required parts will cost about $1,495 per turbine wheel. The manufacturer has stated that it may provide replacement parts for turbine wheels that do not meet inspection criteria, at no cost to operators. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $229,125.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 Federal Aviation Administration 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 FAA amends § 39.13 by adding the following new airworthiness directive:

2005–22–03 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–14347. Docket No. FAA–2005–20742; Directorate Identifier 2005–NE–03–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 29, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Corporation (RRC) (formerly Allison Engine Company) 501–D22A, 501–D22C, and 501–D22G turboprop engines with the turbine wheels listed in the following Table 1, installed.

TABLE 1.—AFFECTED TURBINE WHEELS

Turbine wheel part number	Turbine wheel	Serial numbers
6875431	1st Stage	KK50152 through KK50199.
6845592	2nd Stage	KK40998 through KK41057.
6845593	3rd Stage	KK36452 through KK36461, and KK36492 through KK36532.
6870434	4th Stage	KK40320 through KK40393, and KK40485 through KK40535.

These engines are installed on, but not limited to, Commercial Hercules L–382B, L–382E (L–100–20), L–382G (L–100–30), Airbus Super Guppy–201, Super Convair CV–580A, and CV5800 airplanes.

Unsafe Condition

(d) This AD results from a report of a turbine wheel found to be over dimensional limits, caused by improper metal hardness. We are issuing this AD to prevent uncontained turbine wheel failure, leading to damage of the airplane and total loss of engine power.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next shop visit of the engine or turbine module, but not to exceed 7,400 cycles-since-new of any 1st stage, 2nd stage, 3rd stage, or 4th stage turbine wheel, unless the actions have already been done.

Onetime Inspection for Proper Metal Hardness

(f) Perform a onetime inspection for proper metal hardness of 1st stage, 2nd stage, 3rd stage, and 4th stage turbine wheels. Use paragraphs 2.B. and 2.F. of RRC Commercial Engine Bulletins (CEBs) No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004.

(g) Remove from service any turbine wheel that does not pass inspection, using paragraph 2.C. of RRC CEBs No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004, and install a serviceable turbine wheel.

(h) Mark the letters, HC, after the serial number on any turbine wheel that passes inspection, using the method described in paragraph 2.D. of RRC CEBs No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004.

Reporting Requirements

(i) Report findings of inspections within 30 days of inspection using the procedures specified in paragraph 2.E of RRC CEBs No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004. The Office of Management and Budget (OMB) has approved the reporting requirements specified in paragraph 2.E. of RRC CEBs No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004, and assigned OMB control number 2120–0056.

Definition

(j) For the purpose of this AD, a serviceable turbine wheel is:

(1) A turbine wheel that has a serial number not listed in this AD; and

(2) A turbine wheel that has a serial number listed in this AD that passed the inspection specified in paragraph (f) of this AD.

Alternative Methods of Compliance

(k) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) None.

Material Incorporated by Reference

(m) You must use Rolls-Royce Corporation Commercial Engine Bulletins No. CEB–72–1138, No. CEB–72–4051, and No. CEB–72–1584, (combined in one document) dated January 23, 2004, to perform the actions

required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce Corporation, P.O. Box 420, 2001 South Tibbs Avenue, Indianapolis, IN 46206–0420; telephone (317) 230–2000; fax (317) 230–4020 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., Nassif Building, Room PL–401, Washington, DC 20590–0001, 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 NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on October 17, 2005.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–21173 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21449; Airspace Docket No. 05–AAL–15]

Establishment of Class E Airspace; Deering, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Deering, AK to provide adequate controlled airspace to contain aircraft executing four new Standard Instrument Approach Procedures (SIAPs). This rule results in new Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Deering, AK.

DATES: Effective 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, August 4, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Deering, AK (70 FR 44869). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing four new SIAPs for the Deering Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 2, original; (2) RNAV (GPS) RWY 20, original; (3) RNAV (GPS) RWY 11, original, and (4) RNAV (GPS) RWY 29, original. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Deering Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. The Notice of Proposed Rulemaking document included airspace exclusions to Kotzebue and Buckland Class E airspace and established Federal Airways. Those exclusions were not necessary and are not included in this action.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Deering, Alaska. This Class E airspace is designated to accommodate aircraft executing four new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Deering Airport, Deering, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Deering Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Deering, AK [New]

Deering Airport, AK

(Lat. 66°04′10″ N., long. 162°45′59″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Deering Airport, and that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of the Deering Airport, excluding the airspace outside 12 miles from the shoreline.

* * * * *

Issued in Anchorage, AK, on October 14, 2005.

Judith G. Heckl,

Area Director, Alaska Flight Service Operations.

[FR Doc. 05–21231 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice 5208]

RIN 1400–AB93

Electronic Passport

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the passport regulations to incorporate changes related to introduction of the electronic passport. The rule defines ''electronic passport,'' includes a damaged electronic chip as an additional basis for possible invalidation of a passport and provides for no fee issuance of a replacement passport if an electronic chip fails.

DATES: This rule is effective October 25, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon Palmer-Royston, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs on 202–663–2662.

SUPPLEMENTARY INFORMATION: This rule was originally published in the **Federal Register** on February 18, 2005 (70 FR 8305) as a proposed rule that included changes to the passport regulations needed due to the pending introduction of the electronic passport, as well as changes related to passport amendments, replacement passports, and unpaid fees that did not relate exclusively to electronic passports. Because of the volume of comments, we separated the proposed rule into two final rules. The first rule, RIN 1400-AC11, incorporated the provisions of the proposed rule on passport amendments, replacement passports, and unpaid fees. We received only two comments on those provisions. The second, and instant, rule focuses on electronic passports.

Analysis of Comments

We received a total of 2,335 comments on the introduction of the electronic passport. All comments have been read, sorted, and tabulated according to primary concerns. Comments opposing the proposed rule primarily focus on security and/or privacy, the adequacy of Radio Frequency Identification (RFID), technology, and religious concerns. Specifically, concerns focused as follows: 2019 comments listed security and/or privacy; 171 listed general objections to use of the data chip and/or the use of RFID; 85 listed general objections to use of the electronic passport; 52 listed general technology concerns; and 8 listed religious concerns. Overall, approximately 1% of the comments were positive, 98.5% were negative, and .5% were neither negative nor positive.

The comments are available for review at *http://www.travel.state.gov/,* under the passport section, or at the Department of State (Department) reading room.

Security and Privacy

Passports must be globally interoperable—that is, they must function the same way at every nation's border when they are presented. To that end, the International Civil Aviation Organization (ICAO) has developed international specifications for electronic passports that will ensure their security and global interoperability. These specifications prescribe use of contactless smartcard chips and the format for data carried on the chips. They also specify the use of a form of Public Key Infrastructure (PKI) that will permit digital signatures to protect the data from tampering. The United States (U.S.) will follow these international specifications to ensure its electronic passport is globally interoperable.

The Department intends to begin the electronic passport program in December 2005. The first stage will be a pilot program in which the electronic passports will be issued to U.S. Government employees who use Official or Diplomatic passports for government travel. This pilot program will permit a limited number of passports to be issued and field tested prior to the first issuance to the American traveling public, slated for early 2006. By October 2006, all U.S. passports, with the exception of a small number of emergency passports issued by U.S. embassies or consulates, will be electronic passports.

The ICAO specification for use of contactless chip technology requires a minimum capacity of 32 kilobytes (KB). The U.S. has decided to use a 64KB chip to permit adequate storage room in case additional data, or biometric indicators such as fingerprints or iris scans, are included in the future. Before modifying the definition of ''electronic passport'' to add a new or additional biometric identifier other than a digitized photograph, we will seek public comment through a new rule making process.

The contactless smart chip that is being used in the electronic passport is a ''passive chip'' that derives its power from the reader that communicates with it. It cannot broadcast personal information because it does not have its own source of power. Readers that are on the open market, designed to read Type A or Type B contactless chips complying with International Standards Organization (ISO) 14443 and ISO 7816 specifications, will be able to communicate with the chip. This is necessary to permit nations to procure readers from a variety of vendors, facilitate global interoperability and ensure that the electronic passports are readable at all ports of entry.

The proximity chip technology utilized in the electronic passport is designed to be read with chip readers at ports of entry only when the document is placed within inches of such readers. It uses RFID technology. The ISO 14443 RFID specification permits chips to be read when the electronic passport is placed within approximately ten centimeters of the reader. The reader provides the power to the chip and then an electronic communication between the chip and reader occurs via a transmission of radio waves. The technology is not the same as the vicinity chip RFID technology used for inventory tracking of items from distances at retail stores and warehouses. It will not permit ''tracking'' of individuals. It will only permit governmental authorities to know that an individual has arrived at a port of entry—which governmental authorities already know from presentation of non-electronic passports—with greater assurance that the person who presents the passport is the legitimate holder of the passport.

The personal information that will be contained in the chip is the information on the data page of the passport—the name, nationality, sex, date of birth, place of birth, and digitized photograph of the passport holder. The chip will also contain information about the

passport itself—the passport number, issue date, expiration date, and type of passport. Finally, the chip will contain coding to prevent any digital data from being altered or removed as well as the chip's unique ID number. This coding will be in the form of a high strength digital signature. The contents of the data page of the traditional passport have been established by international usage and by ICAO. The chip will not contain home addresses, social security numbers, or other information that might facilitate identity theft.

In terms of the comments received in response to our proposed rule, a small minority of comments welcomed the rule because of the enhancements to passport security the electronic passport will provide, including better authentication of the document, proof of its link to the bearer and protection against data alteration than is provided by the current, traditional non-electronic passports. The vast majority of comments, however, opposed the introduction of the electronic passport on security and privacy grounds, specifically concerns that skimming or eavesdropping would permit surreptitious reading of the data contained in the passport chip. Skimming is the act of creating an unauthorized connection with a readable chip in order to gain access to the data contained therein. Eavesdropping is the interception of the electronic communication session between a passport chip and an authorized reader.

Comments reflected a concern that the data in the electronic chip could easily be read by portable devices available on the open market. Many of these comments expressed a belief that the information could be read at distances in excess of ten feet. The majority of the comments were concerned that terrorists could identify and target them as U.S. citizens. Identity theft was of grave concern, focusing on the potential for criminal activity resulting directly from identity theft. Some comments expressed fears that criminals could acquire and use the personal information included in the passport to target them for theft, con artist schemes and/or kidnapping. Still others expressed fears that the U.S. Government or other governments would use the chip to track and censor, intimidate or otherwise control or harm them. Some comments called for the inclusion of a fail-safe anti-skimming device.

The Department is sensitive to the security and privacy concerns raised by the comments. To address these concerns, the Department and the Government Printing Office (GPO) have worked with the National Institute of Standards and Technology (NIST) to evaluate the passport's vulnerability to skimming and to test physical devices that can be put in a passport to reduce its likelihood.

Based on that testing, the Department, in cooperation with the GPO, will include an anti-skimming material in the front cover and spine of the electronic passport that will mitigate the threat of skimming from distances beyond the ten centimeters prescribed by the ISO 14443 technology, as long as the passport book is closed or nearly closed.

The Department will also implement Basic Access Control (BAC) to mitigate further any potential threat of skimming or eavesdropping. BAC recently has been adopted as a best practice by the ICAO New Technologies Working Group and will soon be formally added to the ICAO specifications. BAC utilizes a form of Personal Identification Number (PIN) that must be physically read in order to unlock the data on the chip. In this case, the PIN will be derived from the printed characters from the second line of data on the Machine-Readable Zone that is visibly printed on the passport data page. The BAC also results in the communication between the chip and the reader being encrypted, providing further protection.

Shielding the reader or other measures associated with the chip reader can also minimize the possibility of eavesdropping. The Department of Homeland Security (DHS) is responsible for border inspections of travelers, and the provision and use of the equipment at U.S. ports of entry that will read the electronic passports. The DHS is working with NIST on reader security and communications issues.

We believe that the measures described in this rule adequately address the concerns raised by comments regarding security and privacy.

Objections to the Use of the RFID Technology

Some comments discussed a belief that the RFID technology is too faulty or otherwise inadequate to be used in passports. In particular, some comments asserted that the RFID technology could easily be hacked into or counterfeited, which would defeat its usefulness as a security measure. The Department is taking every measure to ensure that the RFID chips it uses are resistant to hacking and counterfeiting. The devices used in the U.S. electronic passport must be Evaluation Assurance Level 4+ certified or better. This third party certification is commonly used with other government smartcard initiatives and it provides assurance that the manufacturing process is auditable and secure.

Additionally, the government conducts regular security audits of its vendor partners and their processes to maintain the security of its travel documents. Finally, the contactless smartcard chip used in the electronic passport will be securely inserted into a highly tamper proof, newly redesigned travel document. The new passport document is itself highly tamper resistant.

According to certain comments, use of a contact chip would be preferable. However, contact chip technology was assessed and specifically excluded by the ICAO subcommittees during the development of their electronic passport specifications. Contact chip technology is primarily used in card formats, and does not easily adapt to fabrication in book-type formats. Contact technology requires the use of exposed contacts that need to make precise contact when inserted in a reader. Fabricating this technology in a book format in a way that facilitates reliable reading is problematic. Passports must be durable over their ten-year life. Passports using contact technology where a part of the passport book must be inserted into a reader would lead to enhanced wear and tear on the passport, thereby fostering unreliable passport book reading.

Other comments suggested that the passport data should be encrypted. The passport data on the chip does not require encryption in order to be secure and protected. It is the same data that is visually displayed on the passport data page. Instead of encrypting data, BAC will permit an encrypted communication session with the reader that will provide a similar protection while not requiring administrative key control issues.

Consequently, we have decided not to change the basic characteristics of the chip that we will use in the electronic passport or the data that it will contain. We will, as explained above, incorporate additional technology, including the anti-skimming material and BAC, to address concerns about skimming and eavesdropping. This will not require any change in the general definition of ''electronic passport'' contained in the proposed regulation. In this final rule, we have made a technical change to the language of the proposed definition to state that the chip will digitally carry information from the data page, a biometric version of the bearer's photo and coding protections.

Again, we believe that the measures described in this rule adequately address the concerns raised by comments regarding RFID technology.

Religious Objections

A small number of comments objected to the electronic passport due to religious beliefs. Without in any way passing judgment upon their beliefs, we do not consider these objections a basis for not proceeding with the proposed rule.

General Objections To Use of the Electronic Chip and Passport

Some comments stated that they objected to use of the electronic chip and passport, but did not give specific reasons for their objections. As a result, the Department is unable to formulate a useful response to their objections.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule, after publishing a proposed rule, allowing a 45-day provision for public comments, and consideration of all comments received. The Department provided for a shorter comment period than the 60 days suggested by Section 6(a) of E.O. 12866 because we believed 45 days would provide the public with a meaningful opportunity to comment while advancing important national security and foreign policy goals. We believe that the 2,335 comments received within that 45-day comment period validates this strategy. In order to protect the security of U.S. borders, it is essential that the Department implement the electronic passport program as soon as possible. In addition, a prompt launch of the program will increase our credibility and good will with other countries, which are implementing similar biometric passport programs.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(b).

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $ 100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure nor will it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the regulation justify its costs. The Department does not consider the rule to be an economically significant regulatory action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to 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. However, the rule does have important policy implications and involves a critical component of upgrading border security for the United States. Accordingly, it has been provided to the Office of Management and Budget (OMB) for review.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

The Paperwork Reduction Act of 1995

The portion of the proposed rule contained in this final rule does not impose any new requirements for the collection of information under the PRA.

List of Subjects in 22 CFR Part 51

Passports and visas.

■ Accordingly, the Department amends Part 51 of 22 CFR as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 22 U.S.C. 211a, 213, 2651a, 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p 570; sec. 236, Public Law 106–113, 113 Stat. 1501A–430; 18 U.S.C. 1621(a)(2).

■ 2. Amend § 51.1 to add a new paragraph (j) to read as follows:

§ 51.1 Definitions.

* * * * *

(j) *Electronic passport* means a passport containing an electronically readable device, an electronic chip, encoded with the information printed on the data page, a biometric version of the bearer's photograph, a unique chip number, and a digital signature to protect the integrity of the stored information.

■ 3. Revise § 51.6 to read as follows:

§ 51.6 Damaged, mutilated or altered passport.

Any passport which has been materially changed in physical appearance or composition, or contains a damaged, defective or otherwise nonfunctioning electronic chip, or which includes unauthorized changes, obliterations, entries or photographs, or has observable wear and tear that renders it unfit for further use as a travel document may be invalidated.

■ 4. Amend § 51.64 to add a new paragraph (e) to read as follows:

§ 51.64 Replacement passports.

* * * * *

(e) When a passport is issued for the balance of the original validity period to replace a passport with a failed electronic chip.

Dated: October 19, 2005.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 05–21284 Filed 10–24–05; 8:45 am]

BILLING CODE 4710–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–NC–0001–200503, FRL–7988–2]

Approval and Promulgation of Implementation Plans: NC: Approval of Revisions to the Control of Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: EPA is taking final action to approve the Control of Visible Emissions portion of a State Implementation Plan (SIP) revision submitted to EPA, by the State of North Carolina, on December 14, 2004. EPA is approving changes to the opacity standards for sources required to install, operate and maintain continuous opacity monitoring systems (COMs). These changes do not increase the number of exceptions or the number of minutes per day for exceptions, but allow the aggregation of the daily exceptions. At this time, we are not taking final action on the remaining portions of the SIP revision submitted by the State on December 14, 2004.

DATES: This rule will be effective November 25, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04–OAR–2005–NC–0001. All documents in the docket are listed in the 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Today's Action
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

On December 14, 2004, the North Carolina Department of Environment and Natural Resources (NC DENR) submitted to EPA revisions to the North Carolina SIP. In the December 14, 2004 submittal, the State of North Carolina requested adoption of new rules and amendments to existing rules including NCAC 2D. 0521 Control of Visible Emissions. On May 18, 2005, EPA proposed approval of the NCAC 2D. 0521 Control of Visible Emissions portion of the December 14, 2004, submittal. Additional information regarding the specific proposed SIP revisions is available in the proposed rule (70 FR 28495, May 18, 2005) included in this docket. EPA provided the public with thirty days to submit comments on the proposed SIP revisions and we received six comment letters. The comments and our responses are discussed below in Part III., ''Response to Comments.'' One commenter requested that EPA hold a public hearing to discuss the proposed SIP revision. NC DENR held seven public hearings. Four public hearings were held in Raleigh, North Carolina on June 6, 2000; August 16, 2000; August 20, 2002; and August 12, 2004. Public hearings were also held in Winterville, North Carolina on October 30, 2003; in Enka, North Carolina on November 5, 2003; and in Charlotte, North Carolina on August 2, 2004. The revisions ultimately included in the December 14, 2004, SIP submission were discussed in these hearings, including the revisions to Rule NCAC 2D .0521 Control of Visible Emissions. The Administrative Procedure Act does not require EPA to hold a public hearing for SIP revisions and, as a matter of practice EPA rarely provides for public hearing for SIP revisions. We see no reason to depart from that practice here, particularly in light of the numerous public hearings held by the State to discuss the changes being made to this rule.

II. Today's Action

Today's action addresses only the NCAC 2D .0521 Control of Visible Emissions portion of the December 14, 2004, submittal. EPA is approving portions of Rule NCAC 2D. 0521 as submitted December 14, 2004, and is not taking action on the remainder of NCAC 2D .0521. EPA does not intend to act on previous versions of NCAC 2D .0521 which are not part of the December 14, 2004 submittal. In light of the public comments received on the May 18, 2005 proposal, EPA needs to consider further the remaining portions of NCAC 2D .0521 in the December 14, 2004, SIP submission and is taking no action on those portions of the SIP revision in this action.

Today's action includes the following:

1. EPA is approving the amendments to Paragraphs (c) and (d) of Rule NCAC 2D .0521. These amendments add references to a new Paragraph (g) that has been added.

2. EPA is approving a portion of Paragraph (g) of Rule NCAC 2D .0521 to allow sources required to install, operate and maintain COMs, to aggregate opacity exceptions on a daily basis rather than being restricted to one opacity exception per hour. Specifically, under the new amendment, sources with COMs are allowed no more than four six-minute opacity exception periods in any one day with no hourly restriction provided that no excess emissions during these periods cause or contribute to a violation of any emission standard or any ambient air quality standard. The new amendment also further restricts the exception periods by requiring that the opacity exceptions for these sources shall not exceed 0.8 percent of the total operating hours in a calendar quarter. Opacity exceptions greater than 0.8 percent of the total operating hours per calendar quarter will be considered a violation of this rule. EPA is not taking action on that portion of Rule NCAC 2D .0521(g) that excludes startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535.

3. No action is being taken on Paragraphs (a), (b), (e) and Paragraph (f) of Rule NCAC 2D .0521.

III. Response to Comments

Comment 1: Numerous commenters objected to changes made to the provisions in Rule NCAC 2D .0521 regarding the exclusion of startup, shutdown, maintenance and

malfunction periods. Two commenters objected to how the proposed rule creates ''an automatic exemption from excess emissions violations during startup, shutdown, malfunctions and maintenance periods.'' They went on to say that by creating ''an automatic exemption,'' the proposed rule revision violates the continuous compliance requirements of the Clean Air Act (CAA or the Act) and EPA policy, citing EPA's ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown,'' issued September 20, 1999 (September 20, 1999 EPA guidance document). The commenters cited examples where EPA struck down ''similar automatic exemption'' proposals put forward by the States of Colorado and Michigan. They also cited the Sixth Circuit Court of Appeals decision to uphold EPA's aforementioned decision to disapprove the State of Michigan's SIP revision allowing ''automatic exemptions.'' One commenter stated that according to the memorandum accompanying EPA's September 20, 1999 policy ''[a]ll Regions should review the SIPs for their states in light of this clarification and take steps to insure that excess emissions provisions in these SIPs are consistent with the attached guidance. (See, Memorandum of Steven A. Herman regarding State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown. 20 September 1999).'' As such, the commenter stated that EPA must review the existing SIP in the same light. They stated that EPA must determine whether the existing SIP's automatic exemption for excess emissions during startup complies with the Act and EPA's regulations and policy governing excess emissions.

Response: We believe that the portions of the submitted SIP revision that address emissions during start-up, shutdown, maintenance and malfunction deserve further evaluation in light of the comments received during the comment period. Therefore, we are not taking action on those provisions at this time. We will respond to these comments at the time we take final action on these provisions of the SIP revision.

Comment 2: One commenter stated that Rule 15A NCAC 2D .0535 Excess Emissions and Reporting and Malfunctions ''violates the Act and EPA Policy and should be removed from the SIP.'' The commenter asserted this is true for several reasons.

Response: Rule 15A NCAC 2D .0535 is not before the Agency in this action.

Comment 3: A number of commenters objected to the change in paragraph (f) of Rule .0521 from ''may'' to ''shall''. The commenter stated that under the current SIP ''the Director is allowed to grant an exception and allow a source to comply with a 40% standard if the owner demonstrates compliance with applicable particulate matter (PM) standards and submits data necessary to show that opacity emissions at 40% will not violate any NAAQS.'' In the commenter's opinion the revision states ''the Director is required to grant the exception and allow sources manufactured after July 1, 1971 to comply with a 40% rather than 20% opacity standard if the owner meets (certain) conditions.'' In the commenter's opinion, the required ''proof'' to demonstrate that conditions are met is not adequate to ensure that sources will not exceed particulate emission standards or will not cumulatively cause an exceedance of the NAAQS. The commenter recommended that the source be required to install PM Continuous Emissions Monitoring Systems (CEMS). They stated that a stack test is insufficient proof that a source operating at 40%, rather than 20% opacity will not exceed its PM limits. The commenter also recommends that modeling must be conducted assuming that all sources are operating at 40% opacity.

Response: We believe that this provision of the submitted SIP revision deserves further evaluation in light of the comments received during the comment period. Therefore, we are not taking action on section (f) at this time. We will respond to this comment at the time we take final action on section (f) of the SIP revision.

Comment 4: Some commenters opposed EPA's approval of Paragraph (g) of Rule 15A NCAC 2D .0521 because it would be less protective than the existing opacity limit. One commenter specifically objected to the change from a standard that is measured on a rolling ''24 hour period'' to one that is measured on the basis of the opacity limit exceptions allowed ''in any one day.'' The commenter argued that a ''rolling average'' is by its nature more protective, and pointed to a previous EPA statement to that effect in connection with a Colorado SIP revision. A number of commenters objected more generally that EPA should not approve the revision to the standard for sources required to operate COMs which, in effect, eliminates the current hourly limit on opacity exceptions, and would allow a source to aggregate the currently allowed 24 minutes of opacity exception time in a given day. The commenters argued that such a change would be contrary to CAA section 110(l).

Response: EPA agrees that North Carolina's submittal includes revisions that will allow sources using COMS to aggregate currently allowed opacity exceptions. EPA does not, however, believe that approval of the revisions is in conflict with either section 110(l) or section 193 of the Clean Air Act. The current SIP approved opacity regulations in North Carolina allow all affected sources to have exceptions to the opacity standard for up to four periods of six minute duration in a 24 hour period. In addition, the current State regulation also imposes other more specific limits on the percentage of opacity that a source may emit during an exception period, based upon the age of the source (*e.g.*, pursuant to Paragraph (c), a source built before 1971 may have no more than four six minute periods at over 40% opacity in a given day, no more than one six minute period at over 40% opacity in a given hour, and no six minute period that exceeds 90% opacity). By the addition of Paragraph (g), the State will allow sources that are required to install, operate, and maintain COMs to aggregate the currently existing opacity exception periods, but maintains the restriction that there may be no more than four six minute opacity exception periods in any calendar day. In effect, such a change eliminates only the current limit of one six minute period per hour, and potentially allows the source to aggregate the four daily six minute periods together for a 24 minute period on a given day. Paragraph (g) of the North Carolina regulation does not permit additional minutes of opacity limit exception in a day, and does not change the percentage of opacity allowed during those exception periods as otherwise required in Paragraphs (c) and (d). EPA notes, however, that by changing from a rolling 24-hour basis to a calendar day basis, there is the potential for a source to utilize the daily 24 minutes of exception period at the end of one calendar day and the 24 minutes of exception period at the beginning of the next calendar day, for a combined 48 continuous minutes of exception period at the opacity limits otherwise required by Paragraphs (c) and (d). Significantly, Paragraph (g) also imposes a new quarterly cap on the amount of time that a source may exceed the opacity limit, which will significantly reduce the total amount of exception period that would otherwise have been permissible under the

existing regulation. EPA has evaluated whether this revision to 15A NCAC 2D .0521 would pose concerns under both section 110(l) and section 193.

Section 110(l) requires that revisions to SIPs do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement. EPA notes that the evaluation of compliance with section 110(l) must take into account all relevant impacts of the proposed change, and that those impacts may differ depending upon the circumstances. In this instance, EPA believes that because the State regulation at issue pertains to opacity, the primary CAA requirements of concern should be impacts on compliance with the NAAQS for PM_{10} and $PM_{2.5}$, and impacts on regional haze. Opacity standards are, even if only indirectly, standards that restrict the emissions of particulate matter, whether solid or liquid. Thus, EPA has looked first to the relevant PM standards and how compliance with those standards is to be determined, as provided in 40 CFR part 50, appendices K, L, and M. In the case of the 24-hour PM_{10} NAAQS, that standard is calculated or measured from midnight to midnight on calendar days, and evaluated for the number of calendar days exceeding the standard per calendar year. For the annual PM_{10} NAAQS, compliance is evaluated based upon the average mean for four calendar quarters, to derive the expected annual arithmetic mean. In the case of the 24 hour $PM_{2.5}$ NAAQS, compliance is determined by measuring the concentration from midnight to midnight on calendar days, and based upon the 98th percentile concentration. For the annual $PM_{2.5}$ NAAQS, the determination is made by averaging the annual average over three years. This is a simplification of the calculations, but illustrates the essential point that for purposes of the NAAQS, the shortest period of time against which compliance is measured is a calendar day. In the case of regional haze, the relevant time periods are also longer. That program relies on a comparison of a number of most and least impaired days over the course of a calendar year. See, 40 CFR 51.308. Therefore, the shortest time period for which an evaluation of possible impacts on regional haze would also be a calendar day.

EPA acknowledges that there is not necessarily a direct correlation between PM mass and opacity. However, the time duration of opacity exceptions and the percentage of opacity during those exceptions can be appropriate measures for evaluating whether a change in an opacity standard may be contrary to 110(l). In the case of the revision to add Paragraph (g) to 15A NCAC 2D .0521, EPA notes that the State has not increased the number of minutes of opacity exception permitted in a day, and has not altered the permissible opacity percentage during those exception periods. The next relevant question is whether the elimination of the current restriction of no more than one six minute exception period per hour would pose a problem for purposes of section 110(l). From this perspective, the CAA requirements of concern would be the PM_{10} and $PM_{2.5}$ NAAQS, and regional haze. Because compliance with those requirements entails evaluation of compliance in periods no shorter than a calendar day, EPA concludes that whether the 24 minutes of opacity exception occur together at one time, or spaced out over four six minute periods over the course of a given day, should have no meaningful impact on the compliance with the NAAQS or regional haze requirements. In other words, for example, because ambient $PM_{2.5}$ concentrations would be measured over the course of a calendar day, when the 24 minutes of opacity exception periods occur during the course of the day should not matter for purposes of the 24 hour $PM_{2.5}$ NAAQS.

The next question of concern is whether aggregation of the total daily exception periods back to back on two successive calendar days would pose a problem for purposes of section 110(l). EPA agrees that there are situations in which a 24 hour rolling standard can be more protective, and situations where revising such a standard would potentially be problematic. Here, however, EPA believes that because calculation of compliance with the NAAQS is gauged over no shorter time period than a calendar day, the aggregation of the opacity exception periods from two calendar days should have no significant impacts for purposes of section 110(l). Moreover, given the type of sources likely to be governed by Paragraph (g), *i.e.*, large electric generation units, EPA believes that such sources are unlikely to be operated in such a fashion that they would typically use all of the exception period minutes from two successive days back to back. EPA's understanding of the methods of operation of these sources is that the exception periods are typically more likely to be used in shorter increments throughout a given day, thereby minimizing the possibility of 48 continuous minutes over two successive days that would previously have been precluded by a 24 hour rolling standard.

Finally, EPA notes that the revised North Carolina opacity standard in Paragraph (g) explicitly provides that sources cannot rely on the opacity exception periods, if excess emissions during such periods would ''cause or contribute to a violation of an emission standard in this Subchapter or 40 CFR part 60, 61, or 63, or any ambient air quality standard in Section 15A NCAC 2D .0400 or 40 CFR part 50.'' EPA interprets this provision as a federally enforceable limitation on opacity exception periods that will help to insure that emissions during such periods do not interfere with other requirements of the CAA.

Section 193 requires that no control requirement in effect before November 15, 1990, in any nonattainment area for any air pollutant may be modified after November 15, 1990 in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant. EPA has evaluated the inclusion of Paragraph (g) in light of this requirement and concluded that the revision is approvable following the same logic. Because the revision has not increased the total number of minutes of opacity exception periods during the course of a day, or altered the percentage of opacity permissible during such periods, EPA does not think that the revision will allow an increase in opacity during the course of a day. EPA agrees that the change from a rolling 24-hour period to a calendar day period for purposes of limiting exception periods could potentially have posed a problem in the context of section 193 if looked at solely from the perspective of a given rolling 24 hour period, but the State's inclusion of a quarterly cap on the number of minutes of exception period serves to negate that concern. EPA believes that the imposition of the quarterly cap on exception periods provides assurances that the revised standard will provide equivalent or greater protection on a quarterly or annual basis.

Comment 5: One commenter stated that no worst-case analysis has been conducted for these proposed amendments. Previous worst-case analysis (based on modeling data collected during a Method-5 stack test of a large boiler at an electrical generation unit) fails to adequately establish that any small group of sources subject to the proposed exemption does not have the potential to cause an exceedance of the NAAQS or PSD increments.

Another commenter stated that North Carolina has not adequately addressed

the requirements of section 110(l) of the Act because the State did not provide modeling data and analysis to justify its proposed SIP revisions. The commenter stated that NC DENR established a relationship between opacity and emission rate of particulate from data collected during a Method-5 stack test of a large boiler at an electrical generation unit (EGU). The commenter argued that because EPA disapproved a similar Colorado SIP revision based on data from one out of twenty-five statewide boilers, EPA should not approve North Carolina's SIP revisions because they are based on data obtained from only one boiler out of, at least, forty-one in the State of North Carolina. The commenter also stated that it appears that the modeling analysis was based on actual emissions from a sample startup/shutdown sequence that was simply repeated in the model throughout the year. The commenter cites EPA's Guidelines on Air Quality Models to argue that North Carolina did not use worst case hourly emissions rates (from the test sequence) in the model for every hour of the year when testing for compliance with 24-hour standards.

Response: EPA believes that allowing aggregation of the daily exceptions allowed will not result in additional opacity. Therefore, EPA has concluded that a worst-case demonstration is not required.

Comment 6: One commenter stated that NCDENR has not adequately addressed the requirements of Section 193. The commenter stated that because the SIP provision governing visible emissions was initially approved by EPA prior to November 15, 1990, North Carolina must demonstrate compliance with this provision prior to EPA approval of its proposed SIP revisions. The commenter believes that these demonstrations must be conducted for all sources within nonattainment areas.

Response: As mentioned previously, these rule changes are not allowing any increase in the number of minutes per day for exceptions from the opacity standard or any increase in the percentage of opacity during such periods. In addition, the imposition of the quarterly cap on minutes of exception to the opacity standard provides assurances that the revised standards will provide equivalent or greater protection on a quarterly or annual basis. Therefore, EPA has concluded that the SIP revision meets the requirements of Section 193 of the Act.

Comment 7: One commenter stated that NCDENR has not adequately addressed the requirements of 40 CFR 51.166(a)(2) (PSD Plan Revisions) in the revision to the rule. The commenter stated that ''if a SIP revision would result in increased air quality deterioration over any baseline concentration, the SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increments.'' The commenter stated that EPA must disapprove the proposed revision if EPA finds that the proposed revisions represent a relaxation from existing requirements that will allow increased emissions into the air.

Response: As explained more fully above, these rule changes are not allowing a relaxation from existing requirements because there is no increase in the minutes of daily opacity exceptions and there is a reduction of such exceptions on a quarterly basis. Thus, EPA has concluded that these revisions do not require the suggested demonstration.

Comment 8: The commenter stated that the SIP revisions do not meet the Clean Air Act requirements that SIP measures be enforceable. The commenter cited EPA's disapproval of Colorado's proposed SIP revisions based on the fact that those revisions did not comply with the Clean Air Act's requirement that such revisions be enforceable. The commenter noted that ''EPA held that Colorado's proposed revisions were insufficient because 'the State does not specify whether exceedances will be measured against the 20% opacity limit * * *, the 30% opacity limit * * *, or both. Id.' '' The commenter believes that EPA must disapprove NC DENR's revisions because the North Carolina regulations are likewise vague and ambiguous, and do not clearly specify whether the exceedances will be measured against the 90%, 87%, 20% or 40% opacity limits, or some combination thereof.

As an example, the commenter argued that the North Carolina revisions do not clearly define whether or not various activities, such as fire building, process modification and adjustment of control equipment are to be counted in determining the number of exceedances in a given quarter. Similarly, the commenter argued that the SIP revisions do not clearly indicate how sources must conduct required recordkeeping and reporting. Also, the commenter stated that the State has failed to address issues relating to significant planned maintenance outage (PMO) startups.

Response: EPA believes that the NC rule is clear about how the opacity exceptions will be measured. Depending on the source, 40% opacity or 20% opacity are the standards. 15A NCAC 2D .0521 paragraphs (c) and (d) include exception periods that allow a source to go above the 40% or 20% opacity for a short period of time (four six minute periods in any 24-hour period). At no time can opacity exceed the upper limits of 90% or 87%, depending on the source. EPA notes that because the sources governed by paragraph (g) have COMs, it should be easier to assure compliance with these limits.

The current rule does not provide for specific exemptions for fire building activities, process modification, adjustment of control equipment or planned maintenance outage (PMO) startups and the rule revisions do not change this. Also, neither the current Rule .0521 nor the rule revision addresses reporting and recordkeeping. Therefore, it is not necessary for the rule revision to address these issues as recommended by the commenter. There will be no change to the scope of Rule .0521 and EPA is not taking action on changes in provisions related to startup, shutdown, maintenance and malfunction.

Comment 9: One commenter stated that the new standard could not be a relaxation of the existing standard because continuous measurement of emissions is more stringent than the visual observation method, implying that more frequent monitoring renders a standard more stringent.

Response: The revision to Rule NCAC 2D .0521 is not a relaxation of the standard for the reasons already given in this **Federal Register** document. EPA does not agree with the commenter's assertion that more frequent monitoring automatically renders a standard more stringent.

IV. Final Action

EPA is taking final action on the Control of Visible Emissions portion of a State Implementation Plan (SIP) revision submitted to EPA, by the State of North Carolina on December 14, 2004. EPA is approving the changes to Paragraphs (c) and (d) of Rule NCAC 2D .0521 Control of Visible Emissions that reference new Paragraph (g) of said rule. EPA is also approving Paragraph (g) of Rule NCAC 2D .0521, with the exception of the clause that provides ''excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section.'' We are not taking action at this time on that portion of Paragraph (g) or on Paragraphs (a), (b), (e), and (f).

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. 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 27, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 17, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 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 II—North Carolina

■ 2. In Section 52.1770(c), table 1 is amended under subchapter 2D by revising the entry for ''.0521 Control of Visible Emissions'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
*	*	*	*	*
.0521	Control of Visible Emissions.	01/01/05	10/25/05 [Insert first page of publication].	Approving changes to Paragraphs (c) and (d) that reference new Paragraph (g). Also, approving Paragraph (g) excluding the following language: ''excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section.''
*	*	*	*	*

* * * * *

[FR Doc. 05–21261 Filed 10–24–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–0005; FRL–7986–8]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from surface cleaning operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 27, 2005 without further notice, unless EPA receives adverse comments by November 25, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0005, by one of the following methods:

1. Agency Web site: *http://docket.epa.gov/rmepub/.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
2. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
3. E-mail: *steckel.andrew@epa.gov.*
4. Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

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

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

Table of Contents

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

I. The State's Submittal

A. What Rules Did the State Submit?

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

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.6	Surface Cleaning and Degreasing	11/11/03	04/26/05
VCAPCD	74.6.1	Batch Loaded Vapor Degreasers	11/11/03	04/26/05
VCAPCD	74.12	Surface Coating of Metal Parts and Products	11/11/03	04/26/05
VCAPCD	74.13	Aerospace Assembly and Component Manufacturing Operations	11/11/03	04/26/05
VCAPCD	74.19	Graphic Arts	11/11/03	04/26/05
VCAPCD	74.19.1	Screen Printing Operations	11/11/03	04/26/05
VCAPCD	74.24	Marine Coating Operations	11/11/03	04/26/05
VCAPCD	74.30	Wood Products Coatings	11/11/03	04/26/05

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

B. Are There Other Versions of These Rules?

We approved versions of these rules into the SIP on the dates listed: Rule 74.6 on December 11, 2000 (adopted on November 10, 1998 and submitted on February 16, 1999), Rules 74.6.1, 74.6.2, and 74.6.3 on July 21, 2000 (adopted on July 9, 1996 and submitted on October 18, 1996), Rules 74.12, 74.13, 74.24, and 74.30 on April 19, 2001 (adopted on September 10, 1996 and submitted on March 3, 1997), 74.19 on May 23, 2002 (adopted on April 10, 2001 and submitted on October 30, 2001), and 74.19.1 on August 21, 1998 (adopted on June 11, 1996 and submitted on October 18, 1996.

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions.

Rule 74.6 limits most cleaning activities to using solvents containing no more than 25 grams per liter. The rule will still allow hydrocarbon solvents to be used for cleaning operations where water-based cleaners would cause problems. The rule applies to any non-boiling surface cleaning operation, including handwipe cleaning, flushing, and cleaning conducted in degreasing tanks and other non-boiling surface cleaning apparatus. Most of the requirements in revised Rule 74.6 are carried over from existing Rules 74.6 and 74.6.1.

Rule 74.6.1 adds requirements to retrofit existing units with an automated parts handling system and to retrofit existing units with either a superheated vapor zone or a refrigerated freeboard chiller. The revised rule was rewritten and rearranged from existing Rule 74.6.2 for clarity and to delete obsolete language. Rule 74.6.1 replaces existing Rule 74.6.2.

Rule 74.6.3 is being repealed because there are currently no conveyorized degreasers operating in the District.

Rules 74.12, 74.13, 74.19, 74.19.1, 74.24, and 74.30 are being revised to prohibit the use of cleaning solvents containing more than 25 grams of reactive organic compounds (ROC) per liter (25 g/l) in degreasing tanks and handwipe operations. This restriction applies to cold surface cleaning operations conducted in degreasing equipment as well as cleaning outside of degreasing equipment.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates a 1-hour ozone nonattainment area (see 40 CFR part 81), so these rules must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. Control Technique Guideline (CTG) titled, ''Control of Volatile Organic Emissions from Solvent Metal Cleaning'' (EPA–450/2–77–022, November 1977), CARB's RACT/BARCT guidance titled, ''Organic Solvent Cleaning and Degreasing Operations'' (July 18, 1991).

B. Do the Rules Meet the Evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations.

The TSD has more information on our evaluation.

C. EPA recommendations To Further Improve the Rules

We have no recommendations.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by November 25, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 27, 2005. This will incorporate these rules into the federally enforceable SIP.

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

III. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves several district rules 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. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 31, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(336)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(336) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) Rules 74.6, 74.6.1, 74.12, 74.13, 74.19, 74.19.1, 74.24, and 74.30, adopted on November 11, 2003.

* * * * *

[FR Doc. 05–21264 Filed 10–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0076a; FRL–7983–4]

Approval and Promulgation of Air Quality Implementation Plans; CO; PM10 Designation of Areas for Air Quality Planning Purposes, Lamar

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado on July 31, 2002, for the purpose of redesignating the Lamar, Colorado area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) under the 1987 standards. The Governor's submittal, among other things, documents that the Lamar area has attained the PM_{10} National Ambient Air Quality Standards (NAAQS), requests redesignation to attainment and includes a maintenance plan for the area demonstrating maintenance of the PM_{10} NAAQS for ten years. EPA is approving this redesignation request and maintenance plan because Colorado has met the applicable requirements of the Clean Air Act (CAA), as amended. Upon the effective date of this approval, the Lamar area will be designated attainment for the PM_{10} NAAQS. This action is being taken under sections 107, 110, and 175A of the Clean Air Act.

DATES: This rule is effective on November 25, 2005.

ADDRESSES: EPA has established a docket for this under Docket ID No. CO–001–0076a. Some information in the docket is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. You may view the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. Copies of the Incorporation by Reference material are also available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Libby Faulk, Air and Radiation Program, U.S. EPA, Region VIII, 999 18th Street, Ste. 200 (8P–AR), Denver, Colorado, 80202–2466. Telephone: (303) 312–6083. E-mail Address: *faulk.libby@epa.gov*

SUPPLEMENTARY INFORMATION: On August 5, 2004, EPA published a notice of proposed rulemaking (NPR) (69 FR 47339) and a direct final rule (DFR) (69 FR 47366) approving the redesignation of the Lamar PM_{10} nonattainment area to attainment. During the public comment period, EPA received adverse comments and therefore withdrew the DFR on September 20, 2004 (69 FR 56163). EPA is addressing the comments received during the comment period in this final rule action. For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* mean the State of Colorado, unless the context indicates otherwise.

Table of Contents

I. EPA's Final Action
A. What Action Is EPA Finalizing in this Rule?
II. Summary of Public Comments and EPA's Response
III. Consideration of CAA section 110(l)
IV. Statutory and Executive Order Reviews

I. EPA's Final Action

A. What Action Is EPA Finalizing in This Rule?

We are approving the Governor's submittal of July 31, 2002, that requests redesignation for the Lamar nonattainment area to attainment for the 1987 PM_{10} standards. Included in Colorado's submittal are changes to the ''State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)'' which we are approving, under

section 110 of the CAA, into Colorado's SIP. We are also approving the maintenance plan for the Lamar PM_{10} nonattainment area, which was submitted with Colorado's July 31, 2002 redesignation request. We are approving this request and maintenance plan because Colorado has adequately addressed all of the requirements of the CAA for redesignation to attainment applicable to the Lamar PM_{10} nonattainment areas. Upon the effective date of this action, the Lamar area designation status under 40 CFR part 81 will be revised to attainment. Please refer to our proposed and direct final rule actions published on August 5, 2004 (69 FR47339; 69 FR 47366) for a more detailed explanation of the redesignation requirements and analysis of how the Lamar area has met EPA's requirements.

II. Summary of Public Comments and EPA's Response

(1) *Comment:* A comment received expressed concern regarding Lamar's recent proposal to convert its natural gas power plant to coal. The commenter believes that the conversion will produce a significant increase in PM_{10} emissions, both from the stack, the coal handling equipment, and the train traffic to bring in the coal. The commenter expressed concern as to whether the coal plant was considered in the redesignations process and is unsure as to whether the coal plant would go through the Prevention of Significant Deterioration (PSD) permitting process. The commenter pointed out that in 2001, the air monitor at the power plant had a high value of 152, in 2002, a high value of 141 and a 4th high value of 125, and in 2003, it had a high value of 132. The commenter believes that it would be impossible for the new coal fired power plant using pulverized coal technology and unloading coal from a train in the windy eastern plains of Colorado to not push the PM monitor at the power plant over the NAAQS.

Response: Lamar Light and Power (part of The Arkansas River Power Authority) submitted an air permit application that was received by the Colorado Department of Health and Environment (CDPHE) on December 30, 2004. The application requests approval to construct a new coal-fired boiler (using natural gas for startup fuel), turbine, and auxiliaries (*i.e.*, coal-handling, ash handling, lime handling, etc.) at the existing Lamar Power Plant. The new unit will replace the existing boiler currently fired on either natural gas or fuel oil. On January 13, 2005, EPA received a copy of the application from CDPHE. As part of their permit application, Lamar Light and Power conducted a significant impact modeling analysis. For the increase in PM_{10} emissions that has been requested by Lamar Light and Power, a significant impact modeling analysis for PM_{10} was required regardless of whether the applicant was subject to PSD permitting for PM_{10} or not. Lamar Light and Power's analysis shows impacts less than the threshold that would require a cumulative impact modeling analysis for PM_{10}. As such, this project's emissions are considered not to cause or contribute to a violation of the PM_{10} NAAQS.

The significant impact modeling analysis submitted by Lamar Light and Power went through CDPHE review prior to issuance of the draft permit, which was published for public review on August 15, 2005. The draft permit issued by CDPHE was subject to a 30-day public comment period, which ended September 15, 2005. EPA did not submit adverse comments on the modeling analysis to CDPHE during the public comment period.

Since PM_{10} is currently a nonattainment pollutant, the PSD program is not applicable for PM_{10}. The major New Source Review (NSR) program would apply if this project were to exceed major source thresholds. Based on the information in the permit application submitted to the State, this project is minor for PM_{10} nonattainment NSR review. That said, the area has been designated as attainment/unclassifiable for $PM_{2.5}$. Based on current EPA guidance (April 5, 2005), PM_{10} is used as a surrogate for regulating $PM_{2.5}$ under the NSR program. As such, PM_{10} was subject to PSD review for this project as a surrogate for the attainment/unclassifiable pollutant, $PM_{2.5}$.

As an additional note, the proposed boiler is not utilizing traditional ''pulverized coal'' technology. Lamar Light and Power is proposing to construct a circulating fluidized bed unit.

Currently, there are four monitoring stations in the Lamar area, two of which have been monitoring PM_{10} since the mid-1970s and the other two started monitoring this year for a special study that was at the request of the Prowers Local Health Department to monitor potential impacts from nearby feed lots. The two special purpose monitors (SPM) operated for 6 months (March to September, 2004) on an every 6th day schedule. Both monitors recorded lower values than the permanent PM_{10} monitors that run on an every day schedule. The highest 24-hour value recorded was 69 μg/m3 at the Red Barn station, well below the 24-hour 150 μg/m³ PM_{10} standard. A data summary of the two SPM monitors can be found on EPA's Air Data Web site: *http://www.epa.gov/air/data/.*

There have been some PM_{10} concentrations for a 24-hour period at the permanent PM_{10} monitors that have exceeded the NAAQS during high wind events. However, the high concentration PM_{10} data exceeding the NAAQS were due to high wind events and as a result these data have been excused by EPA from the NAAQS calculation. Additionally, the Colorado Department of Public Health and Environment was required to create and implement a Natural Event Action Plan (NEAP) to control sources during future high wind events. (See response to comment #4 for more details on Lamar's NEAP.) PM_{10} levels otherwise are well below the NAAQS. According to 40 CFR 50.6(a), ''the standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³, as determined in accordance with appendix K to this part, is equal to or less than one.'' Under 40 CFR part 50 Appendix K(1)(b), it defines exceedances as ''a daily value that is above the level of the 24-hour standard after rounding to the nearest 10 μg/m³ (*i.e.*, values ending in 50 or greater are to be rounded up).'' Therefore, a concentration of 152 μg/m³ is not a NAAQS exceedance per the NAAQS calculation procedures detailed in 40 CFR 50 (Section 50.6 and Appendix K). Rounding of the measured concentrations and the expected exceedance calculations are further explained in the CFR and in EPA's ''Guideline on Data Handling Conventions for the PM NAAQS'' which show the Lamar area below the PM_{10} NAAQS.

(2) *Comment:* Another comment expressed was in regards to Xcel's proposal for a new coal fired unit in Pueblo, Colorado that the commenter believes will represent a significant increase in PM_{10} emission, especially in condensable PM_{10} that, according to the commenter, will leave the plant's stack as SO_2 and thus will not be analyzed as PM_{10} under the PSD permitting process, if there is a PSD process, but will be condensable PM_{10} (mainly SO_4 and H_2SO_4) by the time it gets to Lamar.

Response: EPA has indicated that condensable PM emissions need to be considered as part of the PSD permitting process. This position is articulated in the March 31, 1994 letter from EPA's Office of Air Quality Planning and Standards (OAQPS) to the State of Iowa.

The letter says that when evaluating compliance tests for determining ambient PM_{10} levels in PSD permits, States are required to compute PM_{10} as the sum of in-stack and condensable PM_{10}. This letter also requires that condensable PM_{10} emissions be included in the modeling analysis. Please refer to EPA's OAQPS letter to the State of Iowa, dated March 31, 1994, that is included under additional materials in the docket for this action. EPA, Region 8 has recently commented to the State of Montana and Utah on PSD permits that did not include limits on condensable PM_{10} or incorporate these limits in the modeling analysis. The letter from EPA to the State of Montana is dated December 8, 2004, and the letter from EPA to the State of Utah is dated April 6, 2004, both of which are contained under additional materials in the docket for this notice. Xcel's permit application includes PSD review for increases in condensable PM_{10} emissions.

(3) *Comment:* A comment received expressed concern regarding the **Federal Register** notice stating that the PM_{10} emissions are mainly wind blown. The commenter believes that this statement ignores the fact that there is a major combined animal feeding operation (CAFO) in Lamar that is a significant source of PM_{10} emissions and that the PM_{10} and precursor emissions from the source were not properly considered in determining attainment.

Response: At this time, the CAA does not provide EPA with the authority to regulate air emissions from CAFOs, therefore, EPA is unable to require the State to include emissions from CAFO sources in their PM_{10} redesignation request for the Lamar area.

(4) *Comment:* One commenter expressed concern over the statement that the 1996–2000 violations were caused because of ''high winds.'' The commenter stated that it is common for there to be high winds in Lamar, so much so that a large wind farm (over 100 MW) has been installed. The commenter stated that if Lamar had a reasonable action plan for high winds, it would have to actually be in effect the vast majority of the time, and that it should not be an action plan but rather a permanent part of the SIP which is always in effect.

Response: On May 30, 1996, EPA issued the Natural Events Policy (NEP) in a memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The NEP is the policy EPA established for addressing PM_{10} NAAQS violations that are due to natural events. The policy was applied in Lamar, and the State has submitted documentation to EPA in both the NEAP and the supporting documentation packages for each high-wind exceedance that establishes a clear, causal relationship between the PM_{10} exceedances in Lamar and the unusually high-wind natural events. The State submitted to EPA in February of 1998 a NEAP for Lamar to address exceedances that were associated with unusually high winds and to address the question of what should be done to protect public health. EPA determined the 1998 Lamar NEAP met the 1996 NEP. Per the 1996 NEP, the Lamar NEAP remains in effect to address future exceedances of the PM_{10} NAAQS caused by natural events.

The NEAP for Lamar includes best available control measures (BACM) to control sources of wind-blown dust and many of these measures, including vegetative covers and wind breaks, are always in effect. BACM for PM_{10} are techniques that achieve a maximum degree of emissions reduction from a source as determined on a case-by-case basis considering technological and economic feasibility (59 FR 42010, August 16, 1994). The NEAP for Lamar also includes a continuing public education program and a blowing dust health advisory and notification program, that the NEAP for Lamar was developed by the State in conjunction with the City of Lamar's Public Works Department, Parks and Recreation, Prowers County Commissioners, the U.S. Natural Resources Conservation Services, and numerous other stakeholders. The State made the draft NEAP available for public review and comment by public notice in February 1997, a media advisory and public meeting at a January 1998 Lamar City Council Meeting, a briefing for the Prowers County Commissioners, and a briefing of the Colorado Air Quality Control Commission in February 1998. The NEAP was submitted to EPA in October 1997. After the public presentations to the Lamar City Council and the Colorado Air Quality Control Commission, the State made revisions and submitted the final version of the NEAP to EPA on April 9, 1998 for review and comment. Since EPA provided comments and worked with the State during the development of the NEAP, EPA reviewed the final version and found no need to comment. EPA sent a letter to the State on June 5, 1998, indicating that they had no comments on the final version of the NEAP. As stated above, the Lamar NEAP remains in effect to address future exceedances of the PM_{10} NAAQS caused by natural events.

(5) *Comment:* Commenter stated that there does not appear to be a $PM_{2.5}$ monitor in Lamar which, according to the commenter, would not make sense from a public health point of view. The commenter went on to state that considering that much of the PM probably comes from the CAFO and the existing coal fired power plant in Pueblo, it is highly likely that Lamar is exceeding the $PM_{2.5}$ standard and even more likely that Lamar is exceeding the level that the EPA staff has recommended for a revised $PM_{2.5}$ standard.

Response: In order to protect the public, air monitoring network design and siting are generally guided by citizen complaints and areas suspected of high concentrations, high populations, source emissions, etc. The full procedures for site selection can be found in a document called ''Guidance for Network Design and Optimum Site Exposure for $PM_{2.5}$ and PM_{10}''. However, since this action pertains to PM_{10} and not to $PM_{2.5}$, the issues raised by the commenter are not relevant to the submission made by the State and thus do not affect our approval of it.

III. Consideration of CAA Section 110(l)

Section 110(1) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. As stated above, the Lamar area has shown continuous attainment of the PM_{10} NAAQS and has met the applicable Federal requirements for redesignation to attainment. The maintenance plan and associated SIP revision will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

IV. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. 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 27, 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

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 30, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR parts 52 and 81, chapter I, title 40 are 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 G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(106) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * * *

(106) On July 31, 2002, the State of Colorado submitted a maintenance plan for the Lamar PM_{10} nonattainment area and requested that this area be redesignated to attainment for the PM_{10} National Ambient Air Quality Standards. The redesignation request and maintenance plan satisfy all applicable requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission, ''State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Elements),'' 5 CCR 1001–20, revisions adopted November 15, 2001, effective December 30, 2001 as follows: Section IV, titled ''Lamar Attainment/Maintenance Area,'' and which supersedes and replaces all prior versions of Section IV.

(ii) Additional Material.

(A) Colorado Department of Public Health and Environment, ''Natural Events Action Plan for High Wind Events, Lamar, Colorado,'' submitted to EPA on February 9, 1998 and subsequently approved by EPA, June 5, 1998 and Lamar's revised 2003 ''Natural Events Action Plan for High Wind Events, Lamar, Colorado,'' submitted to EPA on April 16, 2003 and subsequently approved by EPA, February 9, 2004.

* * * * *

■ 3. Section 52.332 is amended by adding paragraph (o) to read as follows:

§ 52.332 Control strategy: Particulate matter.

* * * * *

(o) On July 31, 2002, the State of Colorado submitted a maintenance plan for the Lamar PM_{10} nonattainment area and requested that this area be redesignated to attainment for the PM_{10} National Ambient Air Quality Standards. The redesignation request and maintenance plan satisfy all applicable requirements of the Clean Air Act.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In section 81.306, the table entitled ''Colorado—PM–10'' is amended by revising the entries under Prowers County for ''Lamar'' to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—PM–10

Designated area	Designation date	Type	Classification date	Type
* * *	* * *	*	*	*
Prowers County Lamar	12/27/05		Attainment	
* * *	* * *	*	*	*

* * * * *

[FR Doc. 05–21262 Filed 10–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1504, 1509, 1529, 1536, 1537, and 1552

[FRL–7986–2]

Miscellaneous Revisions to EPAAR Clauses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on administrative changes to the EPA Acquisition Regulation (EPAAR). This action revises the EPAAR, but does not impose any new requirements on Agency contractors. The revisions in this direct final rule will make minor corrections to and streamline Agency acquisition processes to be consistent with and non-duplicative of the Federal Acquisition Regulation (FAR). Some EPAAR clauses will be revised and others will be removed. FAR clauses are available to provide coverage for the EPAAR clauses that are removed by this rule.

DATES: This rule is effective on December 27, 2005 without further notice, unless EPA receives adverse comment by November 25, 2005. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. OARM–2005–0004, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the online instructions for submitting comments.
- E-mail: *oei.docket@epa.gov.*
- Surface Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID # No. OARM–2005–0004.

Instructions: Direct your comments to Docket ID No. OARM–2005–0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Tiffany Schermerhorn, Policy, Training and Oversight Division, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *schermerhorn.tiffany@epa.gov*, telephone (202) 564–9902.

SUPPLEMENTARY INFORMATION:

I. General Information

This rule revises the Environmental Protection Agency Acquisition Regulation (EPAAR) to make administrative changes. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. This rule does not impose any new requirements on Agency contractors. All changes are minor and are consistent with the FAR.

II. Statutory and Executive Order Reviews

A. Executive Order 12866

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.* This rule does not impose any new information

collection or other requirements on Agency contractors.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures 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. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132 (Federalism)

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

This direct 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. 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 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. The direct final rule amends acquisition regulations that are administrative in nature. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

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 Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risk.

H. Executive Order 13211 (Energy Effects)

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 of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) 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 rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Submission to Congress and the General Accounting Office

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 rule will be effective 60 days from date of publication.

List of Subjects in 48 CFR Parts 1504, 1509, 1529, 1535, 1536, 1537, and 1552

Government procurement.

Dated: October 6, 2005.

John C. Gherardini,

Acting Director, Office of Acquisition Management.

■ For the reasons set forth in the Preamble, Chapter 15 of Title 48 Code of Federal Regulations, parts 1504, 1509, 1529, 1536, 1537, and 1552 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1504, 1509, 1529, 1536, 1537, and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

PART 1504—ADMINISTRATIVE MATTERS

1504.670 [Removed and reserved]

■ 2. Remove and reserve section 1504.670.

PART 1509—CONTRACTOR QUALIFICATIONS

■ 3. Revise section 1509.507–2(c) to read as follows:

1509.507–2 Contract clause.

* * * * *

(c) The Contracting Officer shall include the clause at 1552.209–74 or its alternates in the following solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures for Superfund work. The Contracting Officer shall include the clause at 1552.209–74 in all Response Action Contract (RAC) solicitations and contracts, except Site Specific solicitations and contracts. The term ''RAC'' in the Limitation of Future Contracting clauses includes not only RAC solicitations and contracts but other long term response action solicitations and contracts that provide professional architect/engineer, technical, and management services to EPA to support remedial response, enforcement oversight and non-time critical removal activities under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments Reauthorization Act of 1986; and the Robert T. Stafford Natural Disaster Act pursuant to the Federal Response Plan and other laws to help address and/or mitigate endangerment to the public health, welfare or environment during emergencies and natural disasters, and to support States and communities in preparing for the responses to releases of hazardous substances.

(1) Alternate I shall be used in all Emergency and Rapid Response Services (ERRS) solicitations and contracts, except site specific solicitations and contracts. The term ''ERRS'' in the Limitation of Future Contracting clauses includes not only ERRS solicitations and contracts but other emergency response type solicitations and contracts that provide fast responsive environmental cleanup services for hazardous substances/wastes/contaminants/material and petroleum products/oil. Environmental cleanup response to natural disasters and terrorist activities may also be required. ERRS pilot scale studies are included in the term ''treatability studies.''

(2) Alternate II shall be used in all Superfund Technical Assistance and Removal Team (START) solicitations and contracts. The term ''START'' in the Limitation of Future Contracting clauses include not only START solicitations and contracts but other site removal and technical support solicitations and contracts that include activities related to technical analyses in determining the nature and extent of contamination at a site and making recommendations regarding response technologies.

(3) Alternate III shall be used in all Environmental Services Assistance Team (ESAT) solicitations and contracts.

(4) Alternate IV shall be used in all Enforcement Support Services (ESS) solicitations and contracts. The term ''ESS'' in the Limitation of Future Contracting clauses not only includes ESS solicitation and contracts but other enforcement support type solicitations and contracts that involve removal actions, mandatory notices to Potentially Responsible Parties (PRPs), penalty assessments, public comment periods, negotiations with PRPs, and statutes of limitations for pursuing cost recovery. The enforcement support services required under the contract may be conducted to support EPA enforcement actions under any environmental statute.

(5) Alternate V shall be used in all Superfund Headquarters Support solicitations and contracts. The Contracting Officer is authorized to modify paragraph (c) of Alternate V to reflect any unique limitations applicable to the program requirements.

(6) Alternate VI shall be used in all Site Specific solicitations and contracts.

* * * * *

PART 1529—TAXES

1529.401–70 [Removed]

■ 4. Remove section 1529.401–70.

PART 1536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 5. Revise section 1536.602–2(a) to read as follows:

1536.602–2 Establishment of evaluation boards.

(a) The Environmental Protection Agency Architect-Engineer Evaluation Board is established as a central permanent Board located at Headquarters EPA under authority delegated to the Director, Office of Acquisition Management, which may be re-delegated.

* * * * *

PART 1537—SERVICE CONTRACTING

1537.110 [Amended]

■ 6. Remove section 1537.110(d) and redesignate paragraphs (e) through (g) as paragraphs (d) through (f).

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1552.204–70 [Removed and reserved]

■ 7. Remove and reserve section 1552.204–70.

■ 8. Section 1552.208–70 is amended by adding an ''Incidental'' definition after the definition of ''Requirement'' in paragraph (a), and revising the heading of the clause and paragraphs (b) and (d)(2) through (d)(4) to read as follows:

1552.208–70 Printing.

* * * * *

Printing (Dec 2005)

(a) * * *

''Incidental'' means a draft and/or proofed document (not a final document) that is not prohibited from printing under EPA contracts.

(b) *Prohibition.* (1) The contractor shall not engage in, nor subcontract for, any printing in connection with the performance of work under this contract. Duplication of more than 5,000 copies of one page or more than 25,000 copies of multiple pages in the aggregate per requirement constitutes printing. The intent of the printing limitation is to eliminate duplication of final documents.

(2) In compliance with EPA Order 2200.4a, EPA Publication Review Procedure, the Office of Communications, Education, and Media Relations is responsible for the review of materials generated under a contract published or issued by the Agency under a contract intended for release to the public.

(c) * * *

(d) * * *

(2) The contractor may perform a requirement involving the duplication of less than 5,000 copies of only one page, or less than 25,000 copies of multiple pages in the aggregate, using one color (black), such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing. The contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing if it is deemed appropriate to exceed the duplication thresholds. Duplication services of ''incidentals'' in excess of the thresholds, are allowable.

(3) The contractor may perform a requirement involving the multi-color duplication of no more than 100 pages in the aggregate using color copier technology, such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing. The contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing.

(4) The contractor may perform the duplication of no more than a total of 100 diskettes or CD–ROM's. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing. The contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing.

* * * * *

■ 9. In section 1552.209–74, revise the clause heading; revise paragraphs (c) through (i) and remove paragraph (j), revise the heading and paragraph (d) of Alternate I; revise the heading and paragraph (d) of Alternate II; revise the headings of Alternate III and Alternate IV; revise the heading and paragraph (c) of Alternate V; and revise the heading and paragraphs (d) introductory text and (d)(1) of Alternate VI to read as follows:

1552.209–74 Limitation of future contracting.

* * * * *

Limitation of Future Contracting (RAC) (Apr 2004)

* * * * *

(c) The following applies when work is performed under this contract: Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment, task order, or tasking document and for a period of five (5) years after the completion of the work assignment, task order, or tasking document, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(h) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(i) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of Clause)

Limitation of Future Contracting Alternate I (ERRS) (Apr 2004)

* * * * *

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Superfund Technical Assistance and Removal Team (START); type activities (*e.g.*, START contracts) to EPA within the Contractor's ERRS assigned geographical area(s), either as a prime contractor, subcontractor, or consultant.

(2) It will not provide any START type activities (*e.g.*, START contracts) to EPA as a prime contractor, subcontractor or consultant at a site where it has performed or plans to perform ERRS work.

(3) It will be ineligible for award of START type activities contracts for sites within its respective ERRS assigned geographical

area(s) which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

* * * * *

Limitation of Future Contracting Alternate II (Start) (Apr 2004)

* * * * *

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide to EPA cleanup services (*e.g.*, Emergency and Rapid Response Services (ERRS) contracts) within the Contractor's START assigned geographical area(s), either as a prime Contractor, subcontractor, or consultant.

(2) Unless an individual design for the site has been prepared by a third party, it will not provide to EPA as a prime contractor, subcontractor or consultant any remedial construction services at a site where it has performed or plans to perform START work. This clause will not preclude START contractors from performing construction management services under other EPA contracts.

(3) It will be ineligible for award of ERRS type activities contracts for sites within its respective START assigned geographical area(s) which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

* * * * *

Limitation of Future Contracting Alternate III (ESAT) (Apr 2004)

* * * * *

Limitation of Future Contracting Alternate IV (TES) (Apr 2004)

* * * * *

Limitation of Future Contracting Alternate V (Headquarters Support) (Apr 2004)

* * * * *

(c) The Contractor, during the life of this contract, will be ineligible to enter into a contract with EPA to perform response action work (*e.g.*, Response Action Contract (RAC), Emergency and Rapid Response Services (ERRS), Superfund Technical Assistance and Removal Team (START), and Enforcement Support Services (ESS) contracts), unless otherwise authorized by the Contracting Officer.

* * * * *

Limitation of Future Contracting Alternate VI (Site Specific) (Apr 2004)

* * * * *

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Superfund Technical Assistance and Removal Team (START) type activities (*e.g.*, START contracts) to EPA on the site either as a prime contractor, subcontractor, or consultant.

* * * * *

1552.215–76 [Removed and reserved]

■ 10. Remove and reserve section 1552.215–76.

1552.229–70 [Removed and reserved]

■ 11. Remove and reserve section 1552.229–70.

1552.237–73 [Removed and reserved]

■ 12. Remove and reserve section 1552.237–73.

[FR Doc. 05–21196 Filed 10–24–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–04–16855; Amdt. 192–101 and 195–85]

RIN 2137—AD97

Pipeline Safety: Standards for Direct Assessment of Gas and Hazardous Liquid Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: Under current regulations governing integrity management of gas transmission lines, if an operator uses direct assessment to evaluate corrosion risks, it must carry out the direct assessment according to PHMSA standards. In response to a statutory directive, this Final Rule prescribes similar standards operators must meet when they use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines. PHMSA believes broader application of direct assessment standards will enhance public confidence in the use of direct assessment to assure pipeline safety.

DATES: This Final Rule takes effect November 25, 2005. Incorporation by reference of NACE Standard RP0502–2002 in this rule is approved by the Director of the **Federal Register** as of November 25, 2005.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This Final Rule concerns direct assessment, a process of managing the effects of external corrosion, internal corrosion, or stress corrosion cracking on pipelines made primarily of steel or iron. The process involves data collection, indirect inspection, direct examination, and evaluation. Operators use direct assessment not only to find existing corrosion defects but also to prevent future corrosion problems.

Congress recognized the advantages of using direct assessment on U.S. Department of Transportation (DOT) regulated gas, hazardous liquid, and carbon dioxide pipeline facilities. Section 14 of the Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355; Dec. 17, 2002) directs DOT to issue regulations on using internal inspection, pressure testing, and direct assessment to manage the risks to gas pipeline facilities in high consequence areas. In addition, Section 23 directs DOT to issue regulations prescribing standards for inspecting pipeline facilities by direct assessment.

In response to the first statutory directive, Section 14, DOT's Research and Special Programs Administration (RSPA) [1] published regulations in 49 CFR part 192, subpart O, that require operators to follow detailed programs to manage the integrity of gas transmission line segments in high consequence areas. Subpart O also requires an operator electing to use direct assessment in its integrity management program, to carry out the direct assessment according to § § 192.925, 192.927, and 192.929, as appropriate.[2]

Sections 192.925, 192.927, and 192.929 cross-reference the American Society of Mechanical Engineers' (ASME), ASME B31.8S–2001, ''Managing System Integrity of Gas Pipelines.'' ASME B31.8S–2001 describes a comprehensive process to assess and mitigate the likelihood and consequences of gas pipeline risks. In addition, § 192.925 cross-references a

[1] The Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108–426, 118; November 30, 2004) reorganized RSPA into two new DOT administrations: the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Research and Innovative Technology Administration. RSPA's regulatory authority over pipeline and hazardous materials safety was transferred to PHMSA.

[2] The standard on external corrosion direct assessment § 192.925) requires operators to integrate data on physical characteristics and operating history, conduct indirect aboveground inspections, directly examine pipe surfaces, and evaluate the effectiveness of the assessment process. Under the standard for direct assessment of internal corrosion (§ 192.927), operators must predict locations where electrolytes may accumulate in normally dry-gas pipelines, examine those locations, and validate the assessment process. The standard for direct assessment of stress corrosion cracking (§ 192.929) involves collecting data relevant to stress corrosion cracking, assessing the risk of pipeline segments, and examining and evaluating segments at risk.

NACE International (NACE) standard, NACE Standard RP0502–2002, ''Pipeline External Corrosion Direct Assessment Methodology.'' NACE Standard RP0502–2002 describes a step-by-step process for identifying and addressing external corrosion activity, repairing defects, and taking remedial action. Other parts of § § 192.925, 192.927, and 192.929 ensure operators use appropriate criteria in making direct assessment decisions.

II. Proposed Rules

In response to the second statutory directive, Section 23, PHMSA published a notice of proposed rulemaking (NPRM) (69 FR 61771; Oct. 21, 2004). The NPRM proposed standards for using direct assessment on any onshore gas pipeline made primarily of steel or iron and regulated by 49 CFR part 192 or onshore steel hazardous liquid or carbon dioxide pipeline regulated by 49 CFR part 195. Under proposed § 192.490, if an operator chooses to use direct assessment to evaluate the threat of external corrosion, internal corrosion, or stress corrosion cracking on a regulated onshore gas pipeline, the direct assessment would have to be done according to § § 192.925, 192.927, or 192.929, as appropriate. For regulated hazardous liquid and carbon dioxide pipelines, proposed § 195.588 would require similar action, except compliance with § 192.927 would not be required, because § 192.927 requirements are only suitable for dry gas pipelines.

III. Advisory Committee Recommendations

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) considered the NPRM at meetings in Washington, DC, on December 14 and 15, 2004. The TPSSC, a statutorily mandated advisory committee, advises PHMSA on proposed safety standards and other policies concerning gas pipelines. The THLPSSC is a similar committee that provides advice about hazardous liquid and carbon dioxide pipelines. Each committee has an authorized membership of 15 persons with membership evenly divided between government, industry, and the public. Each member is qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards. A transcript of each committee's meeting is available in Docket No. PHMSA–98–4470.

After careful consideration of the NPRM, the THLPSSC voted unanimously to recommend the following: (1) Adopt a single definition of direct assessment for use by hazardous liquid pipeline operators inside and outside high consequence areas; (2) state direct assessment standards directly in part 195, rather than by cross-referencing part 192 standards; (3) consider adopting the consensus standard under development by NACE for direct assessment of stress corrosion cracking; and (4) amend the integrity management rule (§ 195.452) to allow use of direct assessment without prior notice.

As a result of its deliberation, the TPSSC voted unanimously that proposed § 192.490 should not be applied to gas distribution lines. It also voted unanimously that the Final Rule should distinguish direct assessment from similar methods of assessing corrosion. Such a distinction would identify situations where similar methods of addressing corrosion are appropriate but are not regulated under the proposed direct assessment standard.

IV. Disposition of Comments and Advisory Committee Recommendations on Proposed Rules

We received written comments on the proposed rules from 19 sources. These sources are categorized as follows:

State pipeline safety agency	Pennsylvania Public Utility Commission.
Gas pipeline operators	Duke Energy Gas Transmission (Duke), El Paso Corporation (El Paso), Nicor Gas (Nicor), NiSource Corporate Services Company (Nisource), Pacific Gas & Electric Company (PG&E), Paiute Pipeline Company (Paiute), Puget Sound Energy (Puget), Southwest Gas Corporation (SWGas).
Gas pipeline trade associations	American Public Gas Association (APGA), American Gas Association (AGA), Interstate Natural Gas Association of America (INGAA), Northeast Gas Association (NGA).
Gas pipeline industry committee	Gas Piping Technology Committee (GPTC).
Hazardous liquid pipeline trade associations	American Petroleum Institute (API), Association of Oil Pipe Lines (AOPL).
Nonprofit organizations	Cook Inlet Regional Citizens Advisory Council, Pipeline Safety Trust
Consultant	Glen F. Armstrong.

Only one commenter, the Cook Inlet Regional Citizens Advisory Council (Council), created by the Oil Pollution Act of 1990, supported the proposed rules without change. The Council welcomed the additional Federal standards because of the need to control pipeline corrosion. The remaining commenters' issues are stated below along with our disposition of those issues and the advisory committee's recommendations.

Is this rulemaking necessary? AGA, Duke, El Paso, GPTC, INGAA, NiSource, and Puget claimed the integrity management regulations for gas transmission lines (subpart O of part 192) satisfy the statutory directive to prescribe direct assessment standards. Taking a similar position, AOPL and API contended that Congress did not intend direct assessment standards to apply outside integrity management regulations. To support this position, these commenters stated that Congress did not require operators to use direct assessment on pipelines outside integrity management regulations. They also pointed out that direct assessment was developed for use in integrity management programs.

Because the legislative history does not support the commenter's argument that direct assessment standards should apply only to pipelines subject to integrity management rules, PHMSA believes this rulemaking is necessary. It is reasonable to conclude Congress did not intend to restrict direct assessment standards to pipelines covered by integrity management regulations. Unlike the first statutory directive concerning direct assessment, which applies only to pipeline facilities in high consequence areas, the second directive applies to pipeline facilities regardless of location. Also, the first and second directives appear in separate sections of the statute (Sections 14 and 23 of Pub. L. 107–355), with no apparent connection. Had Congress wanted to restrict direct assessment standards to pipelines covered by integrity management regulations, it could have expressly linked the second directive to the first or included the second directive in the same section as the first.

Is proposed § 192.490 appropriate for gas distribution lines? AGA, APGA,

Duke, El Paso, GPTC, INGAA, NGA, Nicor, NiSource, Paiute, and PG&E argued direct assessment was developed for gas transmission integrity management and has not been shown to be appropriate for gas distribution lines. They said the relevant technical data and experience do not show direct assessment would be effective on gas distribution lines. In addition, some of these commenters thought because gas distribution lines differ from gas transmission lines in design, operation, configuration, and location, direct assessment may be impractical on gas distribution lines. The many aboveground and belowground utility facilities—both in-service and abandoned—were thought to pose significant technical hurdles. The Pennsylvania Public Utility Commission and the Pipeline Safety Trust also questioned the suitability of direct assessment for gas distribution lines.

These comments came as a surprise to PHMSA because the two documents that are the mainstays of the proposed direct assessment standards, ASME B31.8S–2001 and NACE Standard RP0502–2002, can be interpreted to cover gas distribution lines. Each document states that it applies to onshore pipelines. Although neither document defines ''pipeline,'' ASME's B31.8 Code, to which ASME B31.8S–2001 is a supplement, defines ''pipeline'' as ''all parts of physical facilities through which gas moves in transportation.'' And ''transportation of gas'' is defined as the ''gathering, transmission, or distribution of gas.''

No matter how ASME B31.8S–2001 and NACE Standard RP0502–2002 are interpreted, the comments persuaded us that direct assessment, as depicted by these two documents, is not appropriate for gas distribution lines. Both ASME B31.8S–2001 and NACE Standard RP0502–2002, were developed during the rulemaking proceeding on gas transmission integrity management and in furtherance of that proceeding. Consequently, neither document was developed with a focus on gas distribution lines. Furthermore, although both documents apply to pipelines, they do not take full account of gas distribution line features as comments suggest they should to treat gas distribution lines appropriately.

Given these considerations and the TPSSC's unanimous recommendation that we not apply the proposed direct assessment standards to gas distribution lines, we decided to exclude distribution lines from final § 192.490. Removing ''pipeline'' from the proposed wording and adding ''transmission line'' in its place accomplishes this change.

Would the proposed standards discourage the voluntary use of corrosion control methods? AGA, Armstrong, Duke, El Paso, GPTC, INGAA, NGA, Nicor, NiSource, Paiute, PG&E, Puget, and SWGas were concerned the proposed standards (§ § 192.490 and 195.588) would discourage operators from voluntarily using corrosion control methods related to direct assessment on pipelines not subject to the integrity management regulations. Their concern stemmed from the difficulty of recognizing when direct assessment is being used. They said performance of any one of the four steps that constitute direct assessment could imply use of direct assessment and lead to disagreements with government inspectors over whether direct assessment is being used. For example, some commenters said performing a close interval electrical survey resembled the indirect examination step of direct assessment. Others thought examining buried pipe for corrosion could be considered the direct examination step. El Paso, INGAA, Nicor, and Armstrong suggested the Final Rule clarify that operators may use corrosion control methods related to direct assessment without having to meet the proposed direct assessment standards.

We recognize disagreements could arise over whether the use of a corrosion control method is part of the direct assessment process. However, we do not think such disagreements are likely to be serious enough to discourage operators from continuing to use such methods separately from direct assessment. To minimize potential disagreements, operators may explain in their corrosion control procedures the situations in which they use methods related to direct assessment separately from direct assessment.

In view of the commenters' concern, PHMSA has added provisions to final § § 192.490 and 195.588 to clarify application of the direct assessment standards. The statement provides that the direct assessment standards do not apply to methods related to direct assessment, such as close interval surveys, voltage gradient surveys, or examination of exposed pipelines, when used separately from the direct assessment process. This change is consistent with the TPSSC's second recommendation.

Are the gas pipeline standards cross-referenced in proposed § 195.588 suitable for hazardous liquid and carbon dioxide pipelines? In their comments on proposed § 195.588, AOPL and API opposed cross-referencing § § 192.925 and 192.929 primarily because these standards refer to ASME B31.8S–2001. They argued ASME B31.8S–2001 was developed for natural gas transmission lines and without the involvement of hazardous liquid pipeline operators. They were also concerned that cross-referencing part 192 gas pipeline standards could lead to misunderstandings by hazardous liquid pipeline operators. The THLPSSC similarly opposed cross-referencing part 192 standards.

In developing the NPRM, we assumed the cross-referenced part 192 standards and their cross-references to ASME B31.8S–2001 would be suitable for hazardous liquid and carbon dioxide pipelines. However, the AOPL and API comments and the THLPSSC's recommendation have caused us to doubt that assumption. In addition, we are concerned that application of the part 192 direct assessment standards to hazardous liquid and carbon dioxide pipelines could present compliance problems. Contributing to this concern is the comment that ASME B31.8S–2001 was not developed with an eye to hazardous liquid pipelines. In fact, paragraph 1.1 of ASME B31.8S–2001 specifically states that the scope of ASME B31.8S–2001 is limited to ''onshore pipeline systems * * * that transport gas.''

Therefore, we decided not to include cross-references to part 192 standards or to ASME B31.8S–2001 in final § 195.588. Instead, final § 195.588 includes a complete statement of direct assessment standards, with cross-references only to NACE Standard RP0502–2002.

Should the integrity management regulations for hazardous liquid and carbon dioxide pipelines allow use of direct assessment without advance notice? The integrity management regulations for hazardous liquid and carbon dioxide pipelines (§ 195.452) prescribe three ways to assess pipeline integrity: internal inspection via a smart pig, pressure testing, and any other technology the operator demonstrates can provide an equivalent understanding of pipe conditions. However, before another technology, such as direct assessment may be used, the operator must notify PHMSA at least 90 days in advance (§ § 195.452(c)(1)(i)(C) and 195.452(j)(5)(iii)).

In contrast to § 195.452, the proposed direct assessment standards do not include a requirement to give 90 days' advance notice as a precondition to using direct assessment. We see no need to propose such a requirement since the current Part 192 direct assessment standards do not require operators to

give advance notice before using direct assessment.

In their comments on proposed § 195.588, AOPL and API suggested direct assessment of external corrosion should be listed directly in § 195.452 as a permissible method of integrity assessment. They believe that when external corrosion direct assessment is performed according to NACE Standard RP0502–2002, it is an acceptable use of ''other technology'' for which 90 days advance notice is no longer necessary. As discussed above under Advisory Committee Recommendations, the THLPSSC also favored listing direct assessment directly in § 195.452 as a recognized assessment method that would bypass the 90-day advance notice requirement.

The purpose of the 90 days advance notice requirement in § 195.452 is to provide time for PHMSA and State pipeline safety agencies to review technology other than pigging and pressure testing to learn what information the technology provides about pipe conditions. According to information on a PHMSA Web site (*http://primis.phmsa.dot.gov/iim/notifications.imd*), several operators have submitted notices of their intent to use direct assessment on hazardous liquid or carbon dioxide pipelines. In a majority of cases, there were no PHMSA or State government objections to the use of direct assessment. Objections were raised where the notification lacked information explaining how the direct assessment was to be performed.

When applied to direct assessment, we believe the 90-day advance notice requirement of § 195.452 is no longer useful and is inconsistent with the proposed rules. Direct assessment is now being used under the part 192 integrity management regulations without advance notice. As a result, government inspectors are fully aware of the direct assessment technology and the situations for which it is suited, making advance case-by-case review under § 195.452 unnecessary. In addition, requiring operators to follow prescribed standards when using direct assessment will remove the primary objection previously raised about operators' advance notices—insufficient information to explain the method of assessment. Therefore, we are changing § § 195.452(c)(1)(i)(C) and 195.452(j)(5)(iii) to allow use of direct assessment in accordance with final § 195.588 without 90 days advance notice.

What standard should apply to direct assessment of stress corrosion cracking on hazardous liquid and carbon dioxide pipelines? The NPRM proposed that § 192.929 be the standard for direct assessment of stress corrosion cracking on hazardous liquid and carbon dioxide pipelines. This standard relies largely on cross-references to ASME B31.8S–2001.

Besides their objections to cross-referencing part 192 standards and particularly ASME B31.8S–2001, AOPL and API suggested that we not adopt any standard for the direct assessment of stress corrosion cracking on hazardous liquid pipelines. They said because methods of detecting stress corrosion cracking are developing rapidly, direct assessment may not be the optimum technology for hazardous liquid pipelines. The THLPSSC recommended we consider adopting the consensus standard that NACE International was developing for direct assessment of stress corrosion cracking.

As explained above, we decided not to cross-reference directly or indirectly ASME B31.8S–2001 in final § 195.588, because the document is closely identified with gas pipelines. Consequently, since provisions of ASME B31.8S–2001 are an important part of the proposed stress corrosion standard, we have not included a direct assessment standard for stress corrosion cracking in final § 195.588. As the THLPSSC recommended, we will consider the recently published NACE Standard RP0204–2004, Stress Corrosion Cracking (SCC) Direct Assessment Methodology, for possible future rulemaking action. By removing the proposed cross-reference to § 192.929, final § 195.588 consists of the text of § 192.925 without its cross-references to ASME B31.8S–2001.

V. Editorial Changes

- Final § § 192.490 and 195.588 do not include the proposed phrase ''or to meet any requirement of this Subpart regarding that threat.'' The phrase was used in the proposed rules to draw attention to situations in which operators might choose to use direct assessment. However, the phrase appears to be unnecessary and, according to comments, possibly confusing.
- Final § 192.490 clarifies that ''direct assessment'' means direct assessment as defined in § 192.903.[3] This definition applies to ''direct assessment'' as it is used in subpart O of part 192, including § § 192.925, 192.927, and 192.929—the bases of the proposed direct assessment standards. Also, in final § 192.490, instead of using the proposed term ''ferrous'' to limit pipelines to which the direct assessment standards apply, we used ''made primarily of steel or iron.'' This change removes the possibility of confusion over the meaning of ferrous.
- We added a similar definition of ''direct assessment'' to § 195.553, which contains definitions applicable to subpart H of part 195, including final § 195.588. This addition satisfies the first THLPSSC recommendation. The definition of ''external corrosion direct assessment,'' which was proposed through the cross-reference to § 192.925, is also added to § 195.553.
- In final § 195.588, we substituted ''pipeline segment'' for the terms ''covered segment'' and ''covered pipeline segment'' to avoid the possibility that the definition of these terms in § 192.903—a segment of transmission pipeline located in a high consequence area—would unintentionally constrain the scope of final § 195.588. A footnote resolves a similar problem in final § 192.490.
- Section 192.925(b) provides that if coating damage is detected by external corrosion direct assessment, the operator must integrate that information with data gathered and integrated under certain other requirements (§ § 192.917(b) and 192.917(e)(1)). These other requirements, which involve evaluating and addressing risks besides corrosion, including third-party damage, apply only to gas transmission lines subject to the integrity management regulations in subpart O of part 192. Although the proposed direct assessment standards for other pipelines included cross-references to § 192.925, the NPRM did not address extending § § 192.917(b) and 192.917(e)(1) to pipelines outside subpart O by virtue of the cross-references. The focus of the NPRM was strictly on using direct assessment to evaluate and address corrosion risks. Using direct assessment data to evaluate non-corrosion risks to pipeline integrity was not discussed. So it would be inappropriate to infer that the proposed references to § 192.925 meant that operators who voluntarily use external corrosion direct assessment on pipelines outside subpart O would also have to comply with § § 192.917(b) and 192.917(e)(1). To ensure this possible inference does not affect the Final Rules, final § § 192.490 and 195.588 exclude pipelines outside subpart O from the § 192.925(b) requirement related to integrating coating damage data. Nevertheless, for

[3] Section 192.903 defines ''direct assessment'' as ''an integrity assessment method that utilizes a process to evaluate certain threats (i.e., external corrosion, internal corrosion and stress corrosion cracking) to a covered pipeline segment's intergrity. The process includes the gathering and integration of risk factor data, indirect examination or analysis to identify areas of suspected corrosion, direct examination of the pipeline in these areas, and post assessment evaluation.''

hazardous liquid and carbon dioxide pipelines that are subject to the integrity management regulations in § 195.452, the detection of coating damage is an important factor to consider in the information analysis required by § 195.452(g) and the continual integrity evaluation required by § 195.452(j)(2).

VI. Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures. PHMSA does not consider this rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of the Final Rule to review. PHMSA also does not consider this rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

PHMSA has evaluated the costs and benefits of this Final Rule and a copy of the evaluation is in the docket. The evaluation concludes operators will incur only minimal costs to comply with the Final Rule.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions have a significant economic impact on a substantial number of small entities. Based on the facts available about the anticipated impacts of this rulemaking, I certify that this rulemaking will not have a significant impact on a substantial number of small entities.

Executive Order 13175. PHMSA has analyzed this rulemaking according to the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because the Final Rule will not significantly or uniquely affect the communities of the Indian Tribal Governments nor impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act. Operators have just recently begun to use direct assessment to assess the effects of corrosion on onshore gas transmission lines subject to the integrity management regulations in subpart O of part 192. The use of direct assessment on other pipelines regulated by part 192 or part 195 is voluntary. This Final Rule does not change this voluntary use status. It merely sets standards for performing direct assessment if operators choose to use it.

Pipeline operators covered by the Final Rule who choose to use direct assessment would have to prepare appropriate plans and procedures and keep records as required by Section 7 of *NACE Standard RP0502–2002.* To help estimate the paperwork burden these operators would face, the NPRM invited comments on how many operators plan to use direct assessment voluntarily and what the burden hours and cost would be.

None of the commenters foresaw any voluntary use of direct assessment or commented on the potential paperwork burden. This result was not a surprise, for direct assessment is a new process and so far its use is mostly limited to gas transmission lines subject to subpart O of part 192. Under these circumstances, it is reasonable to expect that few, if any, operators will be affected by the Final Rule. So no net increase in paperwork burdens is likely from this Final Rule. For this reason, we believe that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary.

Unfunded Mandates Reform Act of 1995. This Final Rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rulemaking.

National Environmental Policy Act. PHMSA has analyzed the Final Rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the Final Rule affects only those operators that voluntarily use direct assessment and because it largely involves processes of data collection and evaluation, we have determined that it is unlikely to significantly affect the quality of the human environment. An Environmental Assessment is available for review in the docket.

Executive Order 13132. PHMSA has analyzed the Final Rule according to the principles and criteria contained in Executive Order 13132, ''Federalism.'' No part of the rule (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211. This Final Rule is not a ''Significant Energy Action'' under Executive Order 13211. 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. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

List of Subjects

49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, PHMSA amends 49 CFR parts 192 and 195 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. Add § 192.490 to read as follows:

§ 192.490 Direct assessment.

Each operator that uses direct assessment as defined in § 192.903 on an onshore transmission line made primarily of steel or iron to evaluate the effects of a threat in the first column must carry out the direct assessment according to the standard listed in the second column. These standards do not apply to methods associated with direct assessment, such as close interval surveys, voltage gradient surveys, or examination of exposed pipelines, when used separately from the direct assessment process.

Threat	Standard [1]
External corrosion	§ 192.925 [2]
Internal corrosion in pipelines that transport dry gas.	§ 192.927
Stress corrosion cracking	§ 192.929

[1] For lines not subject to subpart O of this part, the terms ''covered segment'' and ''covered pipeline segment'' in §§ 192.925, 192.927, and 192.929 refer to the pipeline segment on which direct assessment is performed.

[2] In § 192.925(b), the provision regarding detection of coating damage applies only to pipelines subject to subpart O of this part.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 3. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 4. In § 195.3(c), amend the table of referenced material by adding item G.(2) to read as follows:

§ 195.3 Matter incorporated by reference in whole or in part.

* * * * *

(c) * * *

G. * * * ..... (2) NACE Standard RP0502–2002 "Pipeline External Corrosion Direct Assessment Methodology" (2002).	* * * § 195.588

■ 5. Amend § 195.452 as follows:

■ a. Redesignate paragraph (c)(1)(i)(C) as (c)(1)(i)(D);

■ b. Remove "or" from the end of paragraph (c)(1)(i)(B);

■ c. Redesignate paragraph (j)(5)(iii) as (j)(5)(iv);

■ d. Remove "or" from the end of paragraph (j)(5)(ii); and

■ e. Add new paragraphs (c)(1)(i)(C) and (j)(5)(iii) to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) External corrosion direct assessment in accordance with § 195.588; or

* * * * *

(j) * * *

(5) * * *

(iii) External corrosion direct assessment in accordance with § 195.588; or

* * * * *

■ 6. In § 195.553, add definitions for "direct assessment" and "external corrosion direct assessment (ECDA)" as follows:

§ 195.553 What special definitions apply to this Subpart?

* * * * *

Direct assessment means an integrity assessment method that utilizes a process to evaluate certain threats (*i.e.*, external corrosion, internal corrosion and stress corrosion cracking) to a pipeline segment's integrity. The process includes the gathering and integration of risk factor data, indirect examination or analysis to identify areas of suspected corrosion, direct examination of the pipeline in these areas, and post assessment evaluation.

* * * * *

External corrosion direct assessment (ECDA) means a four-step process that combines pre-assessment, indirect inspection, direct examination, and post-assessment to evaluate the threat of external corrosion to the integrity of a pipeline.

* * * * *

■ 7. Add § 195.588 to read as follows:

§ 195.588 What standards apply to direct assessment?

(a) If you use direct assessment on an onshore pipeline to evaluate the effects of external corrosion, you must follow the requirements of this section for performing external corrosion direct assessment. This section does not apply to methods associated with direct assessment, such as close interval surveys, voltage gradient surveys, or examination of exposed pipelines, when used separately from the direct assessment process.

(b) The requirements for performing external corrosion direct assessment are as follows:

(1) *General*. You must follow the requirements of NACE Standard RP0502–2002 (incorporated by reference, see § 195.3). Also, you must develop and implement an ECDA plan that includes procedures addressing pre-assessment, indirect examination, direct examination, and post-assessment.

(2) *Pre-assessment*. In addition to the requirements in Section 3 of NACE Standard RP0502–2002, the ECDA plan procedures for pre-assessment must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment;

(ii) The basis on which you select at least two different, but complementary, indirect assessment tools to assess each ECDA region; and

(iii) If you utilize an indirect inspection method not described in Appendix A of NACE Standard RP0502–2002, you must demonstrate the applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method.

(3) *Indirect examination*. In addition to the requirements in Section 4 of NACE Standard RP0502–2002, the procedures for indirect examination of the ECDA regions must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment;

(ii) Criteria for identifying and documenting those indications that must be considered for excavation and direct examination, including at least the following:

(A) The known sensitivities of assessment tools;

(B) The procedures for using each tool; and

(C) The approach to be used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect is suspected;

(iii) For each indication identified during the indirect examination, criteria for—

(A) Defining the urgency of excavation and direct examination of the indication; and

(B) Defining the excavation urgency as immediate, scheduled, or monitored; and

(iv) Criteria for scheduling excavations of indications in each urgency level.

(4) *Direct examination*. In addition to the requirements in Section 5 of NACE Standard RP0502–2002, the procedures for direct examination of indications from the indirect examination must include—

(i) Provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment;

(ii) Criteria for deciding what action should be taken if either:

(A) Corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE Standard RP0502–2002 provides guidance for criteria); or

(B) Root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE Standard RP0502–2002 provides guidance for criteria);

(iii) Criteria and notification procedures for any changes in the ECDA plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and

(iv) Criteria that describe how and on what basis you will reclassify and re-prioritize any of the provisions specified in Section 5.9 of NACE Standard RP0502–2002.

(5) *Post assessment and continuing evaluation*. In addition to the requirements in Section 6 of NACE Standard UP 0502–2002, the procedures for post assessment of the effectiveness of the ECDA process must include—

(i) Measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in pipeline segments; and

(ii) Criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the pipeline segment at an interval less than that specified in

Sections 6.2 and 6.3 of NACE Standard RP0502–2002 (see Appendix D of NACE Standard RP0502–2002).

Issued in Washington, DC, on October 19, 2005.

Brigham A. McCown,

Acting Administrator, PHMSA.

[FR Doc. 05–21233 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031015257-3308-02 ; I.D. 101705B]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Suspension of Minimum Atlantic Surfclam Size Limit for Fishing Year 2006

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

ACTION: Temporary rule; suspension of the Atlantic surfclam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit of 4.75 inches (120 mm) for Atlantic surfclams for the 2006 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surfclams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2006, through December 31, 2006.

ADDRESSES: Written inquiries may be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, (978) 281-9220; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surfclam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the Federal Register, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent of the Atlantic surfclam resource is smaller than 4.75 inches (120 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2004 meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit for the 2005, 2006, and 2007 fishing years. In accordance with the provisions of the FMP, the Regional Administrator will publish the suspension of the surfclam minimum size if the proportion of undersized surfclams is under 30 percent of the total surfclam landings for each fishing year.

Commercial surfclam data for 2005 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 6.8 percent of the overall commercial landings were composed of surfclams that were less than 4.75 inches (120 mm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1, 2006, through December 31, 2006.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.Authority: 16 U.S.C. 1801 et seq.

Dated: October 20, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–21302 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 205
Tuesday, October 25, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–083–1]

Importation of Meat That Originates in an FMD Region and Is Cured or Cooked in Another Region

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal and animal product import regulations by adding provisions for the importation of cured or cooked shelf-stable meat derived from ruminants or swine that originate in a region where rinderpest or foot-and-mouth disease exists if the meat is cured or cooked in another region. This action would provide for the importation of these commodities while continuing to protect the U.S. ruminant and swine populations against incursions of rinderpest and foot-and-mouth disease.

DATES: We will consider all comments that we receive on or before December 27, 2005.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0087 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in *Regulations.gov.*
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 02–083–1, 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. 02–083–1.

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

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Masoud Malik, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever. These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.4 sets out conditions under which cured or cooked meat derived from ruminants or swine originating in regions where rinderpest or FMD exists may be imported into the United States. Paragraph (a) contains requirements for cured meat, and paragraph (b), for cooked meat.

Currently, the regulations in § 94.4 do not specifically address the issue of cured or cooked shelf-stable meat that originates in a region with FMD or rinderpest but is cured or cooked in another region. Current § 94.4(a)(4) states that the certificate that must accompany imported cured meat originating in a region with FMD or rinderpest must be issued by an official of the national government of the region of origin. Similarly, current § 94.4(b)(8) states that the certificate that must accompany imported cooked meat originating in a region with FMD or rinderpest must be issued by an official of the national government of the region of origin. No provision is made for the issuance of certificates by governments other than those where the products originate. We are proposing to amend § 94.4(a) and (b) to add such provisions, while maintaining existing safeguards against incursions of rinderpest and FMD. While it is our primary objective in this rulemaking to provide for the importation of meat that originates in a region affected by FMD or rinderpest but is then cured or cooked in a region recognized as free of those diseases, the changes we are proposing would also allow the importation of shelf-stable meat that originates in an FMD- or rinderpest-affected region and is then cured or cooked according to the regulations in another region where FMD or rinderpest is present. It is our view that cured or cooked shelf-stable meat originating in a region with FMD or rinderpest may be safely imported into the United States, regardless of where it is cured or cooked, if the curing or cooking is done in accordance with the regulations in § 94.4.

Currently, the introductory text of § 94.4(a) prohibits the importation of cured meat derived from any ruminants or swine that originate in a region where rinderpest or FMD exists unless the meat is prepared in accordance with the conditions specified in the ensuing paragraphs ((a)(1) through (a)(4)). We would amend that introductory text to indicate that the same restrictions also apply when meat derived from any ruminant or swine that originates in a region where rinderpest or FMD exists is cured in another region.

We are proposing to amend § 94.4(a)(4) in a similar manner. Current paragraph (a)(4) stipulates that cured meat imported from regions with rinderpest or FMD must be accompanied by a certificate issued by an official of the national government of the region of origin who is authorized to issue the foreign meat inspection certificate required by 9 CFR 327.4, stating that the meat has been prepared in accordance with § 94.4(a)(1), (a)(2), and (a)(3)(i). The certificate must be presented to an authorized inspector at

the port of arrival in the United States. We would amend paragraph (a)(4) to indicate that the certificate may either be issued by an authorized official of the national government of the region of origin or, if the meat was cured in another region, by an authorized official of the national government of the region in which the meat was cured.

Conditions for the importation of cooked meat derived from any ruminants or swine that originate in a region where rinderpest or FMD exists are provided in § 94.4(b). Current paragraph (b)(3) provides a blanket exemption from these requirements for canned meat, which is defined, in part, in the regulations of the Food Safety and Inspection Service of the U.S. Department of Agriculture (USDA) in 9 CFR 318.300(d) as a ''meat food product with a water activity above 0.85 which receives a thermal process either before or after being packed in a hermetically sealed container.''

Paralleling our changes to the provisions for imported cured meat in proposed § 94.4(a), we are proposing to amend § 94.4(b)(3) to provide for the importation into the United States of shelf-stable canned meat that is derived from any ruminants or swine originating in an FMD-or rinderpest-affected region and is then cooked and sealed in another region. Additionally, we would amend § 94.4(b)(3) to be more specific regarding cooking and sealing requirements for canned meat. Specifically, proposed § 94.4(b)(3) would state that such meat, whether cooked and sealed in the region of origin or in another region, is exempt from the requirements of § 94.4 if the meat or meat product has been fully cooked by a commercial method in a container hermetically sealed promptly after filling but before such cooking, so that such cooking and sealing produce a fully sterilized product that is shelf-stable without refrigeration.[1] In specifying that only shelf-stable canned meats that are prepared in this manner would be exempt from the other requirements of § 94.4, our proposal would offer greater protection to the U.S. ruminant and swine populations against the introduction of rinderpest or FMD than do the current regulations.

Certification requirements for cooked meat imported into the United States from regions where rinderpest or FMD exists are contained in current paragraph (b)(8). Such meat must be accompanied by a certificate issued by an official of the national government of the region of origin who is authorized to issue the required foreign meat inspection certificate, stating that the cooked meat satisfies the requirements of § 94.4(b). The certificate must be presented to an inspector at the port of arrival in the United States. We would amend this paragraph so that it would reflect our proposed changes to § 94.4(b)(3). Under our proposed § 94.4(b)(8), the certificate could either be issued by an authorized official of the national government of the region of origin or, if the meat being imported is shelf-stable canned meat that was cooked in accordance with § 94.4(b)(3) in another region, by an authorized official of the national government of the region in which the meat was cooked.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations by adding provisions in § 94.4 for the importation of cured or cooked shelf-stable meat derived from any ruminants or swine that originate in a region with rinderpest or FMD if the meat is then cured or cooked in another region.

As shown in table 1, the amount of processed red meat (beef, veal, and pork) imported into the United States in 2003 accounted for 2.4 percent of the total of U.S. red meat imports and was equivalent to less than 1 percent of U.S. production of red meat. We do not anticipate that the amount of processed red meat imported into the United States would increase significantly as a result of the proposed changes. Therefore, the proposed action is not likely to have any significant economic effect on any U.S. entities.

TABLE 1.—U.S. PRODUCTION AND U.S. IMPORTS OF RED MEAT IN 2003 (HS 4-DIGIT)

U.S. production of red meat	U.S. imports of all red meat (fresh and processed)	U.S. imports of processed red meat
21,038,527.2 metric tons	2,024,907.0 metric tons	47,697.4 metric tons.

Source: USDA, Economic Research Service, Livestock, Dairy, & Poultry Outlook/ LDP–M–135/September 16, 2005, and USDA, Foreign Agricultural Service, HS–4 digit imports (*http://www.fas.usda.gov/ustrdscripts*).

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. Among the small entities that could be affected by this proposed rule are beef cattle ranchers, dairy cattle producers, and processors of red meat. Beef cattle ranchers and dairy cattle producers are considered small entities, according to the criteria of the Small Business Administration, as long as their annual sales are less than or equal to $750,000. Producers of cattle on feedlots are considered small entities if their annual revenues are less than or equal to $1.5 million. According to the U.S. Agricultural Census, in 1997, 99 percent of beef cattle ranchers, dairy cattle producers, and cattle producers on feedlots qualified as small entities. For the reasons discussed earlier, however, we do not expect that this proposed rule would have any significant economic effect on any of these entities or on any other U.S. entities, small or large.

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 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork

[1] While this process is relatively standardized, other cooking processes described in § 94.4(b) are very specific and complicated, requiring USDA inspection and verification in the region in which the meats are cooked. Therefore, this proposed rule does not extend to those other cooking processes.

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 94.4, the introductory text of paragraph (a), paragraph (a)(4), paragraph (b)(3), and paragraph (b)(8)(i) would be revised to read as follows:

§ 94.4 Cured or cooked meat originating in regions where rinderpest or foot-and-mouth disease exists.

(a) Whether the meat is cured in the region of origin or in another region, the importation of cured meats derived from any ruminant or swine that originates in a region where rinderpest or foot-and-mouth disease exists, as designated in § 94.1, is prohibited unless the following conditions have been fulfilled:

* * * * *

(4) The cured meat shall be accompanied by a certificate stating that such meat has been prepared in accordance with paragraphs (a)(1), (a)(2), and (a)(3)(i) of this section. The certificate shall be issued by an official of the national government of the region of origin or, if the meat was cured in another region, by an official of the national government of the region in which the meat was cured, who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title. Upon arrival of the cured meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

(b) * * *

(3) *Shelf-stable canned meat.* Shelf-stable canned meat, whether cooked and sealed in the region of origin or in another region, is exempt from the requirements of this section if cooked and sealed in the following manner: The meat or meat product has been fully cooked by a commercial method in a container hermetically sealed promptly after filling but before such cooking, so that such cooking and sealing produce a fully sterilized product that is shelf-stable without refrigeration.

* * * * *

(8) * * * (i) The cooked meat must be accompanied by a certificate stating: ''This cooked meat produced for export to the United States meets the requirements of title 9, Code of Federal Regulations, § 94.4(b).'' The certificate must be issued by an official of the national government of the region of origin or, if the meat is shelf-stable canned meat that was cooked and sealed in accordance with § 94.4(b)(3) in another region, by an official of the national government of the region in which the meat was cooked and sealed, who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title. Upon arrival of the cooked meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

* * * * *

Done in Washington, DC, this 19th day of October 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–21306 Filed 10–24–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20970; Directorate Identifier 2004–NM–53–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 500, 501, 550, S550, 551, and 560 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Cessna Model 500, 501, 550, S550, 551, and 560 airplanes. The original NPRM would have required revising the airplane flight manual (AFM) to prohibit use of the wing fuel boost pumps for defueling under certain conditions; installing a placard; doing other specified investigative and corrective actions as necessary; and modifying the boost pumps. The original NPRM also would have required the subsequent removal of the AFM revision and placard. The original NPRM resulted from a report of a chafed electrical wiring harness, which was arcing inside the fuel tank. This action revises the original NPRM by identifying certain service information not identified in the original NPRM. We are proposing this supplemental NPRM to prevent potential fuel vapor ignition in a fuel tank, which could result in explosion and loss of the airplane.

DATES: We must receive comments on this supplemental NPRM by November 21, 2005.

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

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

For service information identified in this proposed AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277.

FOR FURTHER INFORMATION CONTACT: Bryan Easterwood, Aerospace Engineer, Electrical Systems and Avionics Branch, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4132; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–20970; Directorate Identifier 2004–NM–53–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We

will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, 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 supplemental NPRM. 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 in the Nassif Building at the DOT street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain Cessna Model 500, 501, 550, S550, 551, and 560 airplanes. The original NPRM was published in the **Federal Register** on April 18, 2005 (70 FR 20083). The original NPRM proposed to require revising the airplane flight manual (AFM) to prohibit use of the wing fuel boost pumps for defueling under certain conditions; installing a placard; doing other specified investigative and corrective actions as necessary; and modifying the boost pumps. The original NPRM also proposed to require the subsequent removal of the AFM revision and placard.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we received no comments on the original NPRM or on the determination of the cost to the public. However, we have learned that the temporary revisions (TRs) were not identified in certain service bulletins cited in the original NPRM. This information is provided in the table in the next section.

Relevant Service Information

We have reviewed the TRs identified in the following table.

TRs

Cessna temporary change—	Dated—	To the—
500FM TC–R57–01	April 5, 2004	Cessna Model 500 AFM.
500FM TC–R57–02	April 5, 2004	Cessna Model 500 AFM.
500FM TC–R57–03	April 5, 2004	Cessna Model 500 AFM.
55BFM TC–R10–07	March 17, 2004	Cessna Model 550 Citation Bravo AFM.
55BFM TC–R10–08	March 17, 2004	Cessna Model 550 Citation Bravo AFM.
55BFM TC–R10–09	March 17, 2004	Cessna Model 550 Citation Bravo AFM.
560FM TC–R13–01	March 4, 2004	Cessna Model 560 Citation V AFM.
560FM TC–R13–02	March 4, 2004	Cessna Model 560 Citation V AFM.
560FM TC–R13–03	March 4, 2004	Cessna Model 560 Citation V AFM.
56FMA TC–04–01	March 4, 2004	Cessna Model 560 Citation Ultra AFM.
56FMA TC–04–02	March 4, 2004	Cessna Model 560 Citation Ultra AFM.
56FMA TC–04–03	March 4, 2004	Cessna Model 560 Citation Ultra AFM.
56FMB TC–R03–10	March 12, 2004	Cessna Model 550 AFM.
56FMB TC–R03–11	March 12, 2004	Cessna Model 560 AFM.
56FMB TC–R03–12	March 12, 2004	Cessna Model 560 AFM.
S55CA TC–04–01	July 8, 2004	Cessna Model S550 Citation S/II AFM.
S55CA TC–04–02	July 8, 2004	Cessna Model S550 Citation S/II AFM.
S55CA TC–04–03	July 8, 2004	Cessna Model S550 Citation S/II AFM.
S55FM TC–04–01	March 4, 2004	Cessna Model S550 Citation S/II AFM.
S55FM TC–04–02	March 4, 2004	Cessna Model S550 Citation S/II AFM.
S55FM TC–04–03	March 4, 2004	Cessna Model S550 Citation S/II AFM.

The TRs prohibit use of the wing fuel boost pumps for defueling under certain conditions. Accomplishing the actions specified in the service information described in the original and supplemental NPRMs is intended to adequately address the unsafe condition.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 2,397 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Applicable service bulletin	Work hours	Average hourly labor rate	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
SB500–28–12	20	$65	$2,229	$3,529	444	$1,566,876

ESTIMATED COSTS—Continued

Applicable service bulletin	Work hours	Average hourly labor rate	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
SBS550–28–08	12	65	102	882	126	111,132
SB550–28–14	8	65	1,992	2,512	469	1,178,128
SB550–28–15	8	65	1,936	2,456	194	476,464
SB560–28–10	12	65	1,949	2,729	428	1,168,012
SB560–28–11	8	65	1,052	1,572	101	158,772

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 supplemental NPRM 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):

Cessna Aircraft Company: Docket No. FAA–2005–20970; Directorate Identifier 2004–NM–53–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 the Cessna airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Airplane model(s)	Serial Nos.
500 and 501	0001 through 0689 inclusive.
S550	0001 through 0160 inclusive.
550 and 551	0002 through 0733 inclusive.
550	0801 through 1075 inclusive.
560	0001 through 0648 inclusive.

Unsafe Condition

(d) This AD was prompted by a report of a chafed electrical wiring harness, which was arcing inside the fuel tank. We are issuing this AD to prevent potential fuel vapor ignition in a fuel tank, which could result in explosion and 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.

Service Information

(f) The term ''service bulletin'' as used in this AD refers to the applicable service bulletin listed in Table 2 of this AD.

TABLE 2.—SERVICE INFORMATION

For Cessna model—	Having serial numbers—	Use Cessna service bulletin—	Dated—
500 and 501 airplanes	0001–0689	SB500–28–12	June 14, 2004.
S550 airplanes	0001–0160	SBS550–28–08	May 7, 2004.
550 and 551 airplanes	0002–0733	SB550–28–14	December 2, 2003.
550 airplanes	0801–1075	SB550–28–15	January 20, 2004.
560 airplanes	0001–0538	SB560–28–10	April 23, 2004.
560 airplanes	0539–0648	SB560–28–11	March 12, 2004.

AFM Revision

(g) Within 25 flight hours after the effective date of this AD: Revise the Limitations section of the applicable Cessna airplane flight manual (AFM) to prohibit use of the wing fuel boost pumps for defueling under certain conditions, by inserting the applicable temporary change identified in Cessna Service Bulletin SB550–28–14, dated December 2, 2003, or identified in Table 3 of this AD.

TABLE 3.—TEMPORARY CHANGES

Cessna temporary change—	Dated—	To the—
500FM TC–R57–01	April 5, 2004	Cessna Model 500 AFM.
500FM TC–R57–02	April 5, 2004	Cessna Model 500 AFM.
500FM TC–R57–03	April 5, 2004	Cessna Model 500 AFM.
55BFM TC–R10–07	March 17, 2004	Cessna Model 550 Citation Bravo AFM.
55BFM TC–R10–08	March 17, 2004	Cessna Model 550 Citation Bravo AFM.
55BFM TC–R10–09	March 17, 2004	Cessna Model 550 Citation Bravo AFM.
560FM TC–R13–01	March 4, 2004	Cessna Model 560 Citation V AFM.
560FM TC–R13–02	March 4, 2004	Cessna Model 560 Citation V AFM.
560FM TC–R13–03	March 4, 2004	Cessna Model 560 Citation V AFM.
56FMA TC–04–01	March 4, 2004	Cessna Model 560 Citation Ultra AFM.
56FMA TC–04–02	March 4, 2004	Cessna Model 560 Citation Ultra AFM.
56FMA TC–04–03	March 4, 2004	Cessna Model 560 Citation Ultra AFM.
56FMB TC–R03–10	March 12, 2004	Cessna Model 560 AFM.
56FMB TC–R03–11	March 12, 2004	Cessna Model 560 AFM.
56FMB TC–R03–12	March 12, 2004	Cessna Model 560 AFM.
S55CA TC–04–01	July 8, 2004	Cessna Model S550 Citation S/II AFM.
S55CA TC–04–02	July 8, 2004	Cessna Model S550 Citation S/II AFM.
S55CA TC–04–03	July 8, 2004	Cessna Model S550 Citation S/II AFM.
S55FM TC–04–01	March 4, 2004	Cessna Model S550 Citation S/II AFM.
S55FM TC–04–02	March 4, 2004	Cessna Model S550 Citation S/II AFM.
S55FM TC–04–03	March 4, 2004	Cessna Model S550 Citation S/II AFM.

Placard Installation

(h) Within 25 flight hours after the effective date of this AD: Install a placard close to the fuel quantity gauge, in accordance with the Accomplishment Instructions of the service bulletin. In addition to the specifications in the service bulletin, the letters on the placard must be at least ¼-inch tall.

Inspection and Modification

(i) Within 300 flight hours after the effective date of this AD: Do the actions specified in paragraphs (i)(1) and (i)(2) of this AD in accordance with the Accomplishment Instructions of the service bulletin.

(1) Do a detailed inspection for chafed wiring of the wing fuel boost pumps, and, before further flight thereafter, do all applicable corrective and other specified actions.

(2) Modify the wing fuel boost pumps.

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.''

(j) Before further flight after the inspection and modification required by paragraph (i) of this AD, remove the AFM temporary change and placard required by paragraphs (g) and (h) of this AD.

Reporting Clarification

(k) Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(l) The Manager, Wichita 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.

Issued in Renton, Washington, on October 18, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21309 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22538; Airspace Docket No. 05–AAL–30]

Proposed Revision of Class E Airspace; Koliganek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Koliganek, AK. Two new Standard Instrument Approach Procedures (SIAPs) are being published for the Koliganek Airport. Additional Class E Airspace is needed to contain aircraft executing instrument approaches at Koliganek Airport. Adoption of this proposal would result in additional Class E airspace upward from 1,200 feet (ft.) above the surface at Koliganek, AK.

DATES: Comments must be received on or before December 9, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22538/ Airspace Docket No. 05–AAL–30, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, AAL–530, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.*

Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22538/Airspace Docket No. 05–AAL–30.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise Class E airspace at Koliganek, AK. The intended effect of this proposal is to add Class E airspace upward from 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Koliganek, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Koliganek Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 09, original; and (2) RNAV (GPS) RWY 27, original. Additional Class E controlled airspace extending upward from 1,200 ft. above the surface within the Koliganek Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Koliganek Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing instrument procedures at Koliganek Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Koliganek, AK [Revised]

Koliganek Airport, AK
(Lat. 59°43′36″ N., long. 157°15′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Koliganek Airport and that airspace extending upward from 1,200 feet

above the surface within a 45-mile radius of the Koliganek Airport.

* * * * *

Issued in Anchorage, AK, on October 14, 2005.

Judith G. Heckl,

Area Director, Alaska Flight Service Operations.

[FR Doc. 05–21228 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21535; Airspace Docket No. 05–AAL–24]

Proposed Establishment of Class E Airspace; New Stuyahok, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at New Stuyahok, AK. Two new Standard Instrument Approach Procedures (SIAPs) are being published for the New Stuyahok Airport. There is no existing Class E airspace to contain aircraft executing the new instrument procedures at New Stuyahok, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at New Stuyahok, AK.

DATES: Comments must be received on or before December 9, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21535/Airspace Docket No. 05–AAL–24, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21535/Airspace Docket No. 05–AAL–24.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at http://www.access.gpo.gov/nara.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish new Class E airspace at New Stuyahok, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at New Stuyahok, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the New Stuyahok Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 16, original; and (2) RNAV (GPS) RWY 34, original. New Class E controlled airspace extending upward from 700 ft. above the surface within the New Stuyahok Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the New Stuyahok Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air

navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing instrument procedures at New Stuyahok Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 New Stuyahok, AK [New]

New Stuyahok Airport, AK
(Lat. 59°27′00″ N., long. 157°19′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the New Stuyahok Airport.

* * * * *

Issued in Anchorage, AK, on October 14, 2005.

Judith G. Heckl,

Area Director, Alaska Flight Service Operations.

[FR Doc. 05–21229 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22536; Airspace Docket No. 05–AAL–25]

Proposed Establishment of Class E Airspace; Nondalton, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Nondalton, AK. One new Standard Instrument Approach Procedure (SIAPs) and one Departure Procedure (DP) are being published for the Nondalton Airport. There is no existing Class E airspace to contain aircraft executing the new instrument procedures at Nondalton, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Nondalton, AK.

DATES: Comments must be received on or before December 9, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22536/Airspace Docket No. 05–AAL–25, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22536/Airspace Docket No. 05–AAL–25.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation

Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish new Class E airspace at Nondalton, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Nondalton, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed one new SIAP and one new DP for the Nondalton Airport. The new approach is Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 02, original; and the DP is the Iliamna One RNAV. New Class E controlled airspace extending upward from 700 ft. above the surface within the Nondalton Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Nondalton Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing instrument procedures at Nondalton Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Nondalton, AK [New]

Nondalton Airport, AK

(Lat. 59°58′49″ N., long. 154°50′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Nondalton Airport and within 1 mile each side of the 214° bearing from the airport extending from the 6.3 mile radius to 9.9 miles southwest of the airport.

* * * * *

Issued in Anchorage, AK, on October 14, 2005.

Judith G. Heckl,

Area Director, Alaska Flight Service Operations.

[FR Doc. 05–21230 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22537; Airspace Docket No. 05–AAL–29]

Proposed Establishment of Class E Airspace; Tok Junction, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Tok Junction, AK. Two new Standard Instrument Approach Procedures (SIAPs) are being published for the Tok Junction Airport. There is no existing Class E airspace to contain aircraft executing the new instrument procedures at Tok Junction, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Tok Junction, AK.

DATES: Comments must be received on or before December 9, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22537/ Airspace Docket No. 05–AAL–29, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, AAL–530, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–22537/Airspace Docket No. 05–AAL–29.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish new Class E airspace at Tok Junction, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Tok Junction, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Tok Junction Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 7, original; and (2) RNAV (GPS) RWY 25, original. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Tok Junction Airport area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures at the Tok Junction Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace sufficient to contain aircraft executing instrument procedures at Tok Junction Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Tok Junction, AK [New]

Tok Junction Airport, AK
(Lat. 63°19′46″ N., long. 142°57′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Tok Junction Airport, and that airspace extending upward from 1,200 feet above the surface within a 64.8-mile radius of the Tok Junction Airport.

* * * * *

Issued in Anchorage, AK, on October 14, 2005.

Judith G. Heckl,

Area Director, Alaska Flight Service Operations.

[FR Doc. 05–21232 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD10

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Plans and Information—Protection of Marine Mammals and Threatened and Endangered Species

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: MMS is extending to January 6, 2006, the comment period of the proposed rule titled, ''Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Plans and Information—Protection of Marine Mammals and Threatened and Endangered Species'' published on September 6, 2005 (70 FR 52953). The previous deadline for comments was November 7, 2005. This notice will extend the original 60-day comment period to 120 days. This extension is necessary because of damage caused in the New Orleans area by Hurricane Katrina and the Louisiana/Texas area by Hurricane Rita and subsequent flooding. The extension will provide additional time to the oil and gas industry for reviewing and preparing comments to the rule as it recovers from these disasters.

DATES: MMS will consider all comments received by January 6, 2006. MMS will begin reviewing comments then and may not fully consider comments received after January 6, 2006.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods listed below. Please use the Regulation Identifier Number (RIN) 1010–AD10 in your message.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions on the website for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Use 1010–AD10 in the subject line.
- Fax: 703–787–1546. Identify with 1010–AD10.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Plans and Information—Protection of Marine Mammals and Threatened and Endangered Species—1010–AD10'' in your comments.

You may also send comments on the information collection aspects of this rule directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB Attention: Desk Officer for the Department of the Interior (1010–10) via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with 1010–AD10. Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Regulations and Standards Branch at (703) 787–1604.

SUPPLEMENTARY INFORMATION: Lessees and operators with operations in the Gulf of Mexico Region are engaged in the restoration of normal operations following Hurricanes Katrina and Rita. The extension of the comment period will allow them, and the public, additional time to review the proposed rule and to comment on it. Accordingly, the Department of the Interior is extending the comment period date by 60 days to end on January 6, 2006.

Dated: October 17, 2005.

Chad Calvert,

Acting Assistant Secretary—Land and Minerals Management.

[FR Doc. 05–21282 Filed 10–24–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

Privacy Act; Implementation

AGENCY: Department of the Army

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to exempt those records contained in A0600–20 DCS, G–1, entitled ''Sexual Assault Data Management System (SADMS) Files'' when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records.

DATES: Comments must be received on or before December 27, 2005 to be considered by this agency.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, Attn: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements

beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, 32 CFR part 505 is proposed to be amended as follows:

PART 505—[AMENDED]

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 505.5 is amended by adding paragraph (e)(34) as follows:

§ 505.5 Exemptions.

(e) * * *

(34) *System identifier and name:* A0600–20 DCS, G–1, Sexual Assault Data Management System (SADMS) Files.

(i) *Exemptions:* This system of records is a compilation of information from other Department of Defense and U.S. Government systems of records. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, OSD hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent (A) such provisions have been identified and an exemption claimed for the original record and (B) the purpose underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions are claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: October 17, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–21113 Filed 10–24–05; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–0005; FRL–7986–9]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from surface cleaning operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 25, 2005.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0005, by one of the following methods:

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: VCAPCD Rules 74.6, 74.6.1, 74.12, 74.13, 74.19, 74.19.1, 74.24, and 74.30. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the

comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 31, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–21265 Filed 10–24–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU23

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Distinct Population Segment of the California Tiger Salamander in Sonoma County

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on the proposed designation of critical habitat for the distinct population segment (DPS) of the California tiger salamander in Sonoma County and the availability of the draft economic analysis of the proposed designation of critical habitat. The draft economic analysis identifies potential costs of approximately $336 million over a 20-year period or approximately $17 million per year as a result of the proposed designation of critical habitat, including those costs coextensive with listing. 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 need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until November 14, 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 the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825;

2. You may hand-deliver written comments and information to our Sacramento Fish and Wildlife Office, at the above address, or fax your comments to 916/414–6713; or

3. You may send comments by electronic mail (e-mail) to: *fw1sonoma_tiger_salamander@fws.gov.* For directions on how to file comments electronically, 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.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at *http://www.fws.gov/pacific/sacramento* or from the Sacramento Fish and Wildlife Office at the address and contact numbers above.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone 916/414–6600; facsimile 916/414–6713).

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 (70 FR 44301; August 2, 2005) 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 (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of exclusion outweigh the benefits of including such area as part of critical habitat;

(2) Specific information on the amount and distribution of California tiger salamander (CTS) habitat in Sonoma County, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat;

(4) Information on whether, and if so, 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 the Sonoma County population of the CTS, and how many were either already in place or enacted for other reasons;

(5) 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;

(6) 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;

(7) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(8) The draft economic analysis indicates potentially disproportionate impacts to areas within Sonoma County. Based on this information, we are considering excluding portions of these areas from the final designation per our discretion under section 4(b)(2) of the Act. We are specifically seeking comment and additional information on areas within Sonoma County that could be potentially be disproportionately impacted by a CTS critical habitat designation;

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; does our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses warrant further consideration, and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(10) Whether the draft economic analysis appropriately identifies all costs that could result from the designation; and

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the

benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

All previous comments and information submitted during the initial comment period on the August 2, 2005, proposed rule (70 FR 44301) 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 designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. On the basis of public comment on this analysis and on the critical habitat proposal, and 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 not appropriate for exclusion.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AU23'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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 addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for 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 inspection, by appointment, during normal business hours, at the Sacramento Fish and Wildlife Office at the address listed under **ADDRESSES.**

Copies of the proposed rule and draft economic analysis are available on the Internet at: *http://www.fws.gov/pacific/sacramento/*. You may also obtain copies of the proposed rule and economic analysis from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**), or by calling 916/414–6600.

Background

We published a proposed rule to designate critical habitat for a distinct population segment of the CTS in Sonoma County on August 2, 2005 (70 FR 44301). The proposed critical habitat totaled approximately 74,223 acres (ac) (30,037 hectares (ha)) in Sonoma County. This proposed critical habitat does not include areas within Santa Barbara County or the Central Valley or Central Coast of California. A final critical habitat designation for the distinct population segment of the CTS in Santa Barbara County was published on November 24, 2004 (69 FR 68568), and a final critical habitat designation for the Central population of the CTS was published on August 23, 2005 (70 FR 49380). Per settlement agreement, we will submit for publication in the **Federal Register** a final critical habitat designation for the CTS in Sonoma County on or before December 1, 2005.

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 based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based on the August 2, 2005, proposed rule to designate critical habitat for the CTS in Sonoma County, we have prepared a draft economic analysis of the proposed critical habitat designation.

The current draft economic analysis estimates the foreseeable economic impacts of the proposed critical habitat designation on government agencies and private businesses and individuals. The economic analysis identifies potential costs of approximately $336 million over a 20-year period or approximately $17 million per year as a result of the proposed critical habitat designation, including those costs coextensive with listing. The analysis measures lost economic efficiency associated with residential and commercial development, and public projects and activities, such as economic impacts on transportation projects, the energy industry, and Federal lands. However, no Federal lands are within the proposed critical habitat boundary.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the CTS in Sonoma County, 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 the CTS in essential habitat areas. The draft 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 draft analysis looks retrospectively at costs that have been incurred since the date the species was listed as a threatened species and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address

new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed CTS critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $336 million from 2005 to 2025. Overall, the residential and commercial industry is calculated to experience the highest estimated costs. The draft analysis was conducted at the census tract level. Of the 57 census tracts that are part of this current proposal, six are identified as census tracts responsible for over 80% of the most impacted areas. Annualized impacts of costs attributable to the proposed critical habitat designation are projected to be approximately $17 million.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register,** the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, 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 effect 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 an 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 the proposed designation of critical habitat for the CTS 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 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.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the CTS and proposed designation of its critical habitat. We determined from our analysis that the small business entities that may be affected are firms in the new home construction sector. We estimated the number of affected small businesses and calculated the number of houses built per small firm. It appears that the annual number of affected small firms is far less than one in Sonoma County. Note that if one firm closed in the first year, then this same firm would be affected in subsequent years. The number of small firms will not decrease every year. These firms may be affected by activities associated with the conservation of the CTS, inclusive of activities associated with listing, recovery, and critical habitat. Critical habitat is not expected to result in significant small business impacts. In the development of our final designation, we will explore potential alternatives to minimize impacts to any affected small business entities. These alternatives may include the exclusion of all or portions of the critical habitat units in these counties. As such, we expect that any final designation of critical habitat for the distinct population segment of the CTS in Sonoma County.

We do not believe that the designation of critical habitat for the CTS in Sonoma County will result in a disproportionate effect to small business entities.

However, we are seeking comment on potentially excluding areas from the final critical habitat designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in the county.

Critical habitat designation for the CTS is expected to have the largest impacts on the market for developable land. The proposed critical habitat designation for CTS occurs in a number of rapidly growing areas. Regulatory requirements to avoid onsite impacts and mitigate offsite affect the welfare of both producers and consumers. In the scenario presented here, mitigation requirements increase the cost of development, and avoidance requirements are assumed to reduce the construction of new housing. In this scenario, the proposed critical habitat designation is expected to impose losses of over $336 million over the 20-year study period.

The economic impacts of the proposed critical habitat designation vary widely even with the county. That is, the impacts of designation are frequently localized. This finding is sensible from an economic point of view and is consistent with the teachings of urban economics. Housing prices vary over urban areas, typically declining as the location of the house becomes more remote. Critical habitat is not evenly distributed across the landscape, and large impacts may result if a particular area has a large fraction of developable land in critical habitat. Some areas have few alternate sites for development, or have highly rationed housing resulting in high prices. Any of these factors may cause the cost of critical habitat designation to increase.

The precise spatial scale of the analysis permits identification of specific locations, or parts of individual critical habitat units, that result in the largest economic impacts. The maps contained at the end of the draft economic analysis are instructive in this regard. The maps identify the census tracts within the counties where the impacts are predicted to occur.

Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

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 considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it 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.

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, or 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; Aid to Families with Dependent Children 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) As discussed in the draft economic analysis of the proposed designation of critical habitat for the CTS in Sonoma County, the impacts on nonprofits and small governments are expected to be negligible. There is no record of consultations between the Service and any of these governments since the distinct population segment of the CTS in Sonoma County was emergency listed in 2002. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the distinct population segment of the CTS in Sonoma County within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for the distinct population segment of the CTS in Sonoma County will significantly or uniquely affect these small governmental entities. 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 the Sonoma County population of CTS. 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 the Sonoma

County population of CTS does not pose significant takings implications.

Author

The primary author of this notice is the staff of the Sacramento Fish and Wildlife Service.

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

Dated: October 14, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–21205 Filed 10–24–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 101905C]

Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Notice of Intent to Prepare an Environmental Impact Statement or Environmental Assessment for Fishing Conducted Under the Pacific Coast Groundfish Fishery Management Plan

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS) or environmental assessment (EA); announcement of public scoping period; request for written comments.

SUMMARY: NMFS, in cooperation with the Pacific Fishery Management Council (Council), announces its intention to prepare an EIS or an EA in accordance with the National Environmental Policy Act (NEPA) to assess the impacts of the 2007–2008 Pacific Coast groundfish fishery specifications and management measures on the human, biological, and physical environment.

DATES: Public scoping opportunities for the 2007–2008 Pacific Coast groundfish fishery specifications and management measures EIS (or EA) will occur during meetings of the Council and its advisory bodies starting with the October 31–November 4, 2005, Council meeting and continuing through the June 11–16, 2006, when the Council is scheduled to determine their final preferred alternative (see **SUPPLEMENTARY INFORMATION**). However, only written comments provided to the Council office through November 25, 2005, will be considered in a scoping document summarizing the public's issues and alternatives raised by the public, which may be evaluated in the EIS (or EA).

ADDRESSES: You may submit comments on suggested alternatives and potential impacts identified by I.D. 101905 by any of the following methods:

- E-mail: (*pfmc.comments@noaa.gov* and write ''2007–2008 groundfish specifications EIS'' in subject line).
- Federal eRulemaking Portal: *http://www.regulations.gov*.
- Fax: 503–820–2299.
- Mail: Dr. Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

The scoping document will be available on the Council's website (*www.pcouncil.org*)or by written request from the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Fishery Management Coordinator; phone: 503–820–2280 and e-mail: *John.DeVore@noaa.gov* or Kathe Hawe, NMFS Northwest Region NEPA Coordinator; phone: 206–526–6161 and email: *Kathe.Hawe@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

There are more than 80 species managed under the Pacific Coast Groundfish Fishery Management Plan (groundfish FMP), eight of which have been declared overfished. The groundfish stocks support an array of commercial, recreational, and Indian tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in non-groundfish fisheries, most notably, the trawl fisheries for pink shrimp, ridgeback prawns, California halibut, and sea cucumber.

The proposed action is needed to establish commercial and recreational harvests levels in 2007–2008 that will ensure groundfish stocks are maintained at, or restored to, sizes and structures that will produce the highest net benefit to the nation, while balancing environmental and social values.

The Proposed Action

The proposed action is to implement management measures consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that constrain total fishing mortality during 2007–2008 within limits that maintain fish stocks at, or rebuild them to, a level capable of producing maximum sustained yield, or to a stock size less than this if such stock size results in long-term net benefit to the nation.

These fishing mortality limits are harvest specifications that include acceptable biological catches (ABCs) and optimum yields (OYs) for groundfish species or species groups in need of particular protection; OYs may be represented by harvest guidelines or quotas for species that need individual management. Separate sets of ABCs and OYs will be specified for 2007 and 2008 as part of the multi-year management cycle for groundfish. The allocation of commercial OYs between the open access and limited entry segments of the fishery is also part of the proposed action.

The FMP, as amended by Amendment 17, requires that the groundfish specifications be evaluated and revised as necessary every two years, with separate ABCs and OYs established for each of the two years in the biennial period. Management measures designed to achieve the OYs will be established for each year and, as in the past, may vary from period to period within any one year. These specifications and management measures will be published in the **Federal Register** of the first fishing year in the biennium (2007). The Magnuson-Stevens Act and the groundfish FMP also require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks. These specifications include fish caught in state ocean waters (zero to three nautical miles (nm) offshore) as well as fish caught in the U.S. exclusive economic zone (3 to 200 nm offshore).

Alternatives

NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS. The purpose and need for agency action determines the range of reasonable alternatives. A preliminary set of alternatives will be developed during the October 31–November 4, 2005, Council meeting. Alternatives will be structured around a range of ABCs/OYs for assessed groundfish species. This range of ABCs/OYs is based on stock assessments, including new assessments for 23 of the groundfish species managed under the FMP.

For some species, ABC/OY ranges that would be used to develop alternatives may be based on consultations by the Council with state and federal agencies, Indian tribes, and the affected public on

the allocation of harvest opportunity between sectors. Allocation decisions can affect OYs because different sectors may catch fish of different ages, allowing different sustainable harvest levels.

The Council will be asked to adopt a range of ABCs/OYs, and preferred OYs, if possible, during the October 31–November 4, 2005, Council meeting. A range of alternative management measures will also be identified that will constrain total harvest mortality (across all fisheries intercepting groundfish) to within the preferred OYs. If a preferred OY is not decided for a given stock during the October 31–November 4, 2005, Council meeting, then the range of OYs for that stock will be analyzed in the NEPA document coincident with the analysis of management measure alternatives. Restrictive management measures, intended to rebuild overfished species, have been adopted and implemented over the past several years for most commercial and recreational fishing sectors. Management measures intended to control the rate at which different groundfish species or species groups are taken in the fisheries include trip limits, bag limits, size limits, time/area closures, and gear restrictions. Large area closures, called Groundfish Conservation Areas or Rockfish Conservation Areas, intended to reduce bycatch of overfished species, were first implemented in late 2002. These closed areas will continue to be a key feature of alternatives considered in the EIS to manage groundfish fisheries in 2007–2008. A second important type of measure used to manage groundfish is the cumulative landing limit. These restrict the total weight of fish by species or species group that any one vessel may land during the limit period, which is normally two months. Different cumulative landing limits are established for areas north and south of 40°10′ N lat. (near Cape Mendocino, California) and for limited entry trawl, limited entry fixed gear, and open access fishery participants.

Preliminary Identification of Environmental Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the EIS. The EIS evaluates a range of reasonable alternatives (described above) to determine their likely impacts on the human environment and identify significant impacts. Council and NMFS staff will conduct initial screening to identify the potentially significant impacts of the range of alternatives that will be developed. Issues considered in the EIS for 2005–2006 harvest specifications are likely to be relevant to the EIS for 2007–2008 harvest specifications. (These include the effects of fishing on essential fish habitat, protected species listed under the Endangered Species Act and Marine Mammal Protection Act, the sustainability of overfished and non-overfished groundfish stocks, and socioeconomic impacts to individuals and communities involved in the use of groundfish resources).

Public Scoping Process

Public scoping will primarily occur early in the Council's decision-making process. All decisions during the Council process benefit from written and oral public comments delivered prior to or during the Council meeting. These public comments are considered integral to scoping for developing this EIS (or EA). A preliminary range of 2007 and 2008 harvest specifications and management measures will be decided at the October 31–November 4, 2005, Council meeting in San Diego, CA at the Hyatt Regency Islandia, 1441 Quivira Road, San Diego, CA 92109 (858–792–5200). The Council is expected to refine the range of management measures at their March 5–10, 2006, meeting in Seattle, WA at the Seattle Marriott Hotel-Sea Tac, 3201 S 176th Street, 98188–4094; telephone 206–241–2000 or 800–314–0925. The Council is expected to decide final 2007 and 2008 harvest specifications, further refine the range of management measures, or decide their preferred alternative at their April 2–7, 2006 meeting in Sacramento, California at the Double Tree Hotel, 2001 Point West Way, 95815–4702; telephone 916–929–8855 or 800–222–8733. The Council is expected to decide or refine their preferred alternative at their June 11–16, 2006, meeting in Foster City, California at the Crowne Plaza Mid Peninsula, 1221 Chess Drive, 94404; telephone 800–227–6963 or 650–570–5700. Public comment may be made under the agenda items when the Council will consider these proposed actions. The agendas for these meetings will be available from the Council website or by request from the Council office in advance of the meeting (see **ADDRESSES**). Written comments on the scope of issues and alternatives may also be submitted as described under **ADDRESSES**.

NMFS invites comments and suggestions on the scope of the analysis to be included in the draft EIS (DEIS) or draft EA (DEA) (both hereafter referred to as the NEPA document). The scope includes the range of alternatives to be considered and potentially significant impacts to the human environment that should be evaluated in the NEPA document. In addition, NMFS is notifying the public that, in conjunction with the Council, it is beginning a full environmental analysis and decision-making process for this proposal, so interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision.

A NEPA document will be prepared for comment later on in the process. The comment period on the NEPA document will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**, if this is an EIS. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the NEPA document should be as specific as possible and may address the adequacy of the statement or merits of the alternatives discussed. It is also helpful if comments refer to specific pages or chapters of the NEPA document. Comments may also address the adequacy of the NEPA document or the merits of the alternatives formulated and discussed in the NEPA document. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA CFR 1503.3 in addressing these points.) Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter 503–820–2280 (voice) or 503–820–2299 (fax), at least 5 days prior to the scheduled meeting date.

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

Dated: October 20, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–21301 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 101805D]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 129th meeting to consider and take actions on fishery management issues in the Western Pacific Region.

DATES: The 129th Council meeting and public hearings will be held on November 8–11, 2005. For specific times, and the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The 129th Council meeting and public hearings will be held at the Hilton Guam, 202 Hilton Road, Tumon Bay, Guam; telephone: 671–646–1835.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Schedule and Agenda for Council Standing Committee Meetings

Tuesday, November 8, 2005

Standing Committee

7–8 a.m. Ecosystem and Habitat Standing Committee
8–9 a.m. Pelagics and International Standing Committee
9–11 a.m. Executive and Budget Standing Committee
11 a.m.–12 noon Precious Corals Standing Committee

Schedule and Agenda for Public Hearings

Wednesday, November 9, 2005

1:30 p.m. Hawaii Black Coral Management

Thursday, November 10, 2005

11:30 a.m. Management of Hawaii Longline Swordfish Fishery
11:45 a.m. Management to address overfishing of Western and Central Pacific Ocean Yellowfin

Friday, November 11, 2005

11:30 a.m. Western Pacific Fishery Ecosystem Plans
11:45 a.m. Commonwealth of the Northern Mariana Islands (CNMI) Fishery Ecosystem Plan Pilot Project

For more information on public hearing items, see Background Information.

The agenda during the full Council meeting will include the items listed here.

Schedule and Agenda for Council Meeting

8 a.m.–2:15 p.m. Wednesday, November 9, 2005

1. Opening Ceremony
2. Greetings from the Governor of Guam
3. Presentations to Ecosystem Poster Contest Winners
4. Introductions
5. Approval of agenda
6. Approval of 127th and 128th meeting minutes
7. Island reports
   A. American Samoa
   B. Guam
   C. Hawaii
   D. Commonwealth of the Northern Mariana Islands (CNMI)
8. Reports from fishery agencies and organizations
   A. NMFS
   1. Pacific Islands Regional Office
   a. Report on Observer Placement Protocol
   2. Pacific Islands Fisheries Science Center
   B. The Department of the Interior - The U.S. Fish and Wildlife Service (USFWS)
   C. NOAA General Counsel Southwest Region/Pacific Islands Region
   D. State Department
9. Enforcement/vessel monitoring systems
   A. Report on United States Coast Guard activities
   B. NOAA Office of Law Enforcement (OLE) Activities
   C. Status of Violations
   D. Report from Guam Enforcement Agency
10. Fishery Rights of Indigenous Peoples
   A. Guam voluntary data collection program
   B. Community Demonstration Projects Program
   1. Guam Longline Project
   2. CNMI Remote Fishing Stations
   C. Communities Program
   D. Scientific and Statistical Committee (SSC) Recommendations
11. Bottomfish Fisheries
   A. Report on Guam Bottomfish Fishery
   B. Main Hawaiian Islands Bottomfish Overfishing Options
   C. Plan Team Comments
   D. SSC Recommendations
12. Precious Coral Fisheries
   A. Black Coral Management and Research
   1. Hawaii Black Coral Management
   a. State of Hawaii Black Coral Research
   b. Black Coral Management Options (Final Action)
   B. Plan Team Recommendations
   C. SSC Recommendations
   D. Standing Committee Recommendations
   E. Public Hearing on Hawaii Black Coral Management
13. Crustacean Fisheries
   A. Report on Guam's Crustacean Fishery
   B. Northwestern Hawaiian Islands Spiny Lobster Model Report
   C. Plan Team Recommendations
   D. SSC Recommendations

8:30 a.m.–5 p.m. Thursday, November 10, 2005

14. Pelagic/International Fisheries
   A. Report on Guam's Pelagic Fisheries
   B. Pelagic Fishery Management Plan Actions
   1. Management of Hawaii Longline Swordfish Fishery (Initial Action)
   2. Overfishing of Western and Central Pacific Ocean Yellowfin (Initial Action)
   3. Management of Fish Aggregation Devices (FAD)
   4. Definition of short-longlines
   5. Main Hawaiian Islands Longline buffer zones
   6. American Samoa FAD closures
   C. International Fisheries Management
   1. Inter-American Tropical Tuna Convention
   2. Western and Central Pacific Fishery Commission
   3. Pacific Islands Regional Office International Division Activities
   4. Other International issues: Eastern Pacific Ocean Yellowfin and North Pacific Albacore Stock Condition
   D. American Samoa and Hawaii Longline Fisheries Quarterly Reports
   E. Plan Team Recommendations
   F. SSC Recommendations
   F. Standing Committee Recommendations
   G. Public Hearings
   Management of Hawaii Longline Swordfish Fishery (Initial Action)
   Overfishing of Western and Central Pacific Ocean Yellowfin (Initial Action)
15. Protected Species
   A. International Fishers Forum III

B. Malaysia Longline Bycatch Workshop
C. Haggan (Turtle) Watch Program
D. CNMI Turtle Watch Program
E. Longline Mitigation Research
F. SSC Recommendations
16. Ecosystems and Habitat
A. Western Pacific Fishery Ecosystem Plans (FEP)(FINAL ACTION)
1. FEP Objectives
2. FEP Boundaries
3. FEP Management Unit Species
4. FEP Regional Coordination
B. CNMI FEP Pilot Project (Initial Action)
1. Project Overview
2. Ecosystem Indicators
3. Commonwealth and Guam Inshore Community-based Initiatives
4. Guam Offshore Banks Management Options
C. Public Comment

6:30–9 p.m. Thursday November 10, 2005

Fishers Forum at the Guam Fishermen's Cooperative

8:30 a.m.–3 p.m. Friday, November 11, 2005

Ecosystems and Habitat Continued
D. Report on Guam's Coral Reef Fisheries
E. Guam Reef Ecosystem Annual Report
F. Reconstruction of Coral Reef and Bottomfish Catches
G. CNMI Sanctuary Program
H. National Marine Sanctuary Program (NMSP)
1. NMSP Report
2. NOAA Review of Council Northwestern Hawaiian Islands Draft Fishing Regulations
I. Report from Plan Teams
J. SSC recommendations
K. Standing Committee Recommendations
L. Public Hearing on Western Pacific Ecosystem Plans and CNMI Pilot Project.
17. Program Planning
A. Update on Legislation
B. Magnuson-Steven Fishery Conservation and Management Act (Magnuson Act) Reauthorization
C. Education and Outreach Report
18. Administrative Matters and Budget
A. Financial Reports
B. Administrative Report
C. Meetings and Workshops
D. Advisory Group Changes
E. Standing Committee Recommendations
19. Other Business
A. National Plan of Action on Fishing Capacity
B. Next Meeting

Background Information

1. Change in the Black Coral Harvest Minimum Size (Final action)

The Council will take final action to implement a regulatory amendment to the Precious Corals FMP to revise the minimum harvest size for black corals (*Antipathes* sp.) due to the effects of Carijoa riisei and harvest pressure on black corals in the Main Hawaiian Islands. Based on comments received during Precious Coral Plan Team meetings, as well as subsequent SSC, Council, and public working group meetings, the Council developed an options document that includes: (1) Removing the exemption allowing harvest of black corals with a minimum base diameter of 3/4 inch (1.905–cm) or minimum height of 36 inches (0.9144 m) by persons who reported harvest to the State of Hawaii within five years prior to April 17, 2002; (2) Establishing a 48–inch (1.2192–m) minimum height only requirement for harvest of black coral colonies; (3) Eliminating any minimum base diameter requirement; (4) Eliminating any minimum height requirement; (5) Removing the exemption and minimum base diameter requirement; (6) Removing the exemption and minimum height requirement; and (7) Instituting a moratorium on black coral harvest. At its 127th meeting, the Council took initial action to identify and support a range of alternatives, including the selection of a preliminary preferred alternative. The Council's preliminary preferred alternative was to remove the exemption allowing harvest of black corals with a minimum base diameter of 3/4 inch (1.905–cm) or minimum height of 36 inches(0.9144 m) by persons who reported harvest to the State of Hawaii within five years prior to April 17, 2002. Under this alternative, all black coral would be harvested at a minimum base size of 1–inch or minimum height of 48 inches (1.2192–cm). At the 129th Council Meeting, the Council will select a preferred alternative to be analyzed in a regulatory amendment to be transmitted to NMFS.

2. Management of Hawaii Longline Swordfish Fishery (Initial action)

The swordfish segment of the Hawaii longline fishery was reopened in April 2004, following an amendment to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) to introduce new technology for turtle conservation. The Pelagics FMP amendment required all longliners fishing for swordfish, employing shallow (< 30 m) sets, to use 18/0 circle hooks with a 10° offset, and mackerel type bait. This hook and bait combination has been shown to markedly reduce catches of endangered loggerhead and leatherback turtles. As an added precaution, a 'hard' cap on the allowable number of interactions with loggerhead and leatherback turtles was also included in the amendment. If the swordfish targeting fleet caught more than 16 leatherback and 17 loggerhead turtles in any calendar year, then the swordfish fishery would close for the remainder of the year. In addition, a cap was placed on the annual volume of fishing effort, of 2,120 sets, for the swordfish-targeting segment of the Hawaii-based longline fishery. The number of sets was divided equally among all fishermen expressing an interest in targeting swordfish, with each set being accorded a unique numbered certificate, which had to be reported when used.

Finally, all vessels targeting swordfish were obliged to carry an observer to record any turtle interactions. Few swordfish sets were made in 2004, but in 2005 the fishery began operating in earnest. As of August 15, 2005, the swordfish fleet had a total of 7 interactions with leatherback turtles and 9 loggerhead interactions, with about 80 percent of the number of longline sets used up. Given the success of these management measures in greatly reducing turtle interactions, particularly the hard cap on turtle interactions, there may be no need to maintain a cap on swordfish directed fishing effort. Moreover, the administration of the 2,120 longline sets (50 percent of the historical level of swordfish effort) is a substantial burden on NMFS for little to no conservation gains for turtles, given the incentive to fishermen to minimize interactions afforded by the caps on loggerhead and leatherback turtles, and the success of the hook/bait combination in reducing turtle captures. Consequently, the Council is proposing to amend the Pelagics FMP to remove the cap on shallow set fishing effort while maintaining the turtle caps and other measures to conserve turtles. At the 129th Council meeting, the Council may decide to take initial action to modify the cap on swordfish-targeting longline sets.

3. Overfishing of Western and Central Pacific Ocean Yellowfin (Initial action)

Results of the most recent stock assessments for yellowfin tuna reviewed by the Inter-American Tropical Tuna Commission (IATTC), and the Western and Central Pacific Fishery Commission (WCPFC) indicate that this species is fished at unsustainably high levels in the Pacific Ocean. Although the stock is

not yet overfished, is it is being subjected to overfishing, as defined under the Council's control rule, as established by National Standard 1 in the Magnuson-Stevens Act. As required by the Magnuson Stevens Act (16 U.S.C. 1854 (e)(3)) and the implementing regulations at 50 CFR 600.310(e)(3), the Councils must take action to address overfishing within one year of an identification by the Secretary of Commerce that overfishing is occurring. Although, no official communication has yet been received by the Council from the Secretary of Commerce concerning overfishing of Pacific yellowfin the Council may decide, nevertheless, to take initial action at this meeting to address this issue in a timely manner.

At its 126th meeting, the Council took final action on an amendment to the Pelagics FMP to address similar overfishing of Pacific bigeye tuna. It was recognized in this amendment that unilateral action by the Council would be insufficient to end overfishing of bigeye tuna and the same is also true for yellowfin tuna. Accordingly, the Council amended the Pelagics FMP to include a protocol by which the Council would take action on international management of highly migratory species such as tunas managed by regional fishery management organizations (RFMOs) such as IATTC and WCPFC. This includes ensuring Council inclusion in US delegations to international fishery management meetings and the drafting of position papers on measures to reduce overfishing and rebuild stocks. This would include consideration of the reduction of purse seine effort around fish aggregating devices which are thought to be one of the key elements leading to overfishing of yellowfin tuna. The Council will review Pelagic Plan team and Scientific and Statistical Committee comments and recommendations and may take initial action on how to deal with the overfishing of yellowfin tuna in the Western and Central Pacific.

4. Western Pacific Fishery Ecosystem Plans

The Council will consider final action to implement the framework necessary to transform their existing species-based Fishery Management Plans (Pelagics, Bottomfish and Seamount Groundfish, Crustaceans, Precious Corals, and Coral Reef Ecosystems) into place-based Fishery Ecosystem Plans. Specifically the measures being considered by the Council at this time would establish Fishery Ecosystem Plans with appropriate boundaries, management unit species and advisory structures. The measures being considered would re-order the current fishery regulations by geographic area, but would not add any new regulations. This action will allow the Council to begin the integration and implementation of ecosystem approaches to management for each ecosystem under its jurisdiction and provide mechanisms for broader input to the Council decision making process. The Council will review the comments and recommendations of the Joint Plan Teams (Pelagics, Bottomfish and Seamount Groundfish, Crustaceans, Precious Corals, and Coral Reef Ecosystems) and the Scientific and Statistical Committee and may take final action on adopting this framework for implementation.

5. CNMI Fishery Ecosystem Plan Pilot Project

The Council will consider initial action to begin implementation of ecosystem-based strategies for the Mariana Archipelago Fishery Ecosystem Plan (FEP). The strategies being considered at this time were developed through a 10 month pilot project initiated by the Council and will address: (1) monitoring and forecasting of ecological change; (2) community-based participation to foster collaboration among management partners; and 3) options for a specific management experiment at offshore banks in Guam's Exclusive Economic Zone that is intended to generate learning and feedback for adaptive management. The Council will review the comments and recommendations of the Joint Plan Teams (Pelagics, Bottomfish and Seamount Groundfish, Crustaceans, Precious Corals, and Coral Reef Ecosystems) and the Scientific and Statistical Committee and may take initial action on adopting these strategies for implementation.

This pilot project is linked to the Council's initiative to transform the existing species-based Fishery Management Plans (Pelagics, Bottomfish and Seamount Groundfish, Crustaceans, Precious Corals, and Coral Reef Ecosystems) into place-based Fishery Ecosystem Plans.

Although non-emergency issues not contained in this agenda may come before the 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 document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens 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 Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: October 19, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–21300 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 205

Tuesday, October 25, 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

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2005 projects elected monitors. The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on October 25, 2005, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Dan Ritter, District Manager, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Dan Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: October 18, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–21257 Filed 10–24–05; 8:45am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act; Meetings

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Wednesday, November 2, 2005.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The following matters have been placed on the Staff briefing for the Board of Directors meeting agenda:

1. Reduction in FY2005 class C stock dividend rate due to statutory restrictions.
2. Update on liquidation of the bank.
3. Administrative and other issues.

ACTION: Stockholders' meeting.

TIME AND DATE: 9 a.m., Thursday, November 3, 2005.

PLACE: Conference Room 107–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the stockholders' meeting:

1. Call to order.
2. Establishment of a quorum.
3. Action on Minutes of the November 14, 2003, stockholders' meeting.
4. Secretary's Report on loans approved, FY 2005.
5. Treasurer's Report.
6. Status report on liquidation of the Bank.
7. New business.
8. Adjournment.

ACTION: Board of Directors meeting.

TIME AND DATE: Immediately following stockholders' meeting, Thursday, November 3, 2005.

PLACE: Conference Room 107–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting (Items 3 through 5 will only be necessary if a quorum is not established in the stockholders' meeting and these items are not addressed previously.):

1. Call to order.
2. Action on Minutes of the August 4, 2005, board meeting.
3. Secretary's Report on loans approved, FY 2005.
4. Treasurer's Report.
5. Status report on liquidation of the Bank.
6. Consideration of resolution to reduce FY2005 class C stock dividend rate due to statutory restrictions.
7. Establishment of meeting dates for 2006.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Jonathan Claffey, Acting Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: October 21, 2005.

Curtis Anderson,

Acting Governor, Rural Telephone Bank.

[FR Doc. 05–21383 Filed 10–21–05; 2:03 pm]

BILLING CODE 3410–15–P

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

TIME AND DATE: 10 a.m.–12:30 p.m. November 4, 2005.

PLACE: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

STATUS: Most of the meeting will be open to the public. If there is a need for an executive session (closed to the public), it will be announced at the meeting.

MATTERS TO BE CONSIDERED: *Portions Open to the Public*: The primary purpose of this meeting is to (1) review the independent auditors' report of Commission's financial statements for fiscal year 2004–2005; (2) review the Low-Level Radioactive Waste (LLRW) generation information for 2004; (3) consider a proposal budget for fiscal year 2006–2007; (4) review recent national developments regarding LLRW management and disposal; (5) discuss the need for a survey of LLRW generators in the Compact; and (6) elect the Commission's Officers.

PORTIONS CLOSED TO THE PUBLIC: Executive Session, if deemed necessary, will be announced at the meeting.

CONTACT PERSON FOR MORE INFORMATION: Richard R. Janati, Pennsylvania Staff member on the Commission, at 717–787–2163.

Richard R. Janati,

PA Staff Member on the Commission.

[FR Doc. 05–21242 Filed 10–24–05; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 9 and 10, 2005, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

November 9

Public Session

1. Microprocessor Roadmap Update.
2. Update on BIS programs and activities.
3. Quantum Computing.
4. First Annual HPC Review.
5. InfiniBand Technology and the EAR.
6. Industry proposal to change 4A3g.
7. Network Performance discussions.
8. China ''catch all'' August 9, 2005 Regulation.

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 Sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public transportation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 19, 2005, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 Section (10)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as decribed in 5 U.S.C. 552(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 Sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–4814.

Dated: October 19, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–21279 Filed 10–24–05; 8:45am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 25, 2005.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2002), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

Initiation of Reviews:

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2006.

Antidumping Duty Proceedings	Period to be Reviewed
CANADA: Certain Softwood Lumber.	
A–122–838	5/1/04 - 4/30/05
Woodwise Lumber Limited[1].	
LATVIA: Steel Concrete Reinforcing Bars.	
A–449–804	9/1/04 - 8/31/05
Joint Stock Company Liepajas Metalurgs.	
REPUBLIC OF KOREA: Stainless Steel Wire Rod.	
A–580–829	9/1/04 - 8/31/05
Changwon Specialty Steel Co., Ltd..	
Dongbang Specialty Steel Co., Ltd..	
REPUBLIC OF KOREA: Steel Concrete Reinforcing Bars.	
A–580–844	9/1/04 - 8/31/05
Dongil Industries Co., Ltd..	
Dongkuk Steel Mill Co., Ltd..	
Hanbo Iron & Steel Co., Ltd.	
INIsteel.	
Kosteel Co., Ltd..	
Korea Iron and Steel Company.	
SWEDEN: Stainless Steel Wire Rod.	

Antidumping Duty Proceedings	Period to be Reviewed
A–401–806	9/1/04 - 8/31/05
Fagersta Stainless AB.	
TAIWAN: Stainless Steel Wire Rod.	
A–583–828	9/1/04 - 8/31/05
Walsin Lihwa Corporation.	
THE PEOPLE'S REPUBLIC OF CHINA: Freshwater Crawfish Tail Meat[2].	
A–570–848	9/1/04 - 8/31/05
China Kingdom Import & Export Co., Ltd..	
aka China Kingdoma Import & Export Co., Ltd..	
aka Zhongda Import & Export Co., Ltd..	
Jiangsu Hilong International Trading Company, Ltd..	
Jiangsu Jiushoutang Organisms–Manufactures Co., Ltd..	
Shanghai Sunbeauty Trading Co., Ltd..	
Ningbo Nanlian Frozen Foods Company, Ltd..	
Qingdao Jinyongxiang Aquatic Foods Co., Ltd..	
Qingdao Wentai Trading Co., Ltd..	
Qingdao Zhengri Seafood Co., Ltd..	
Weishan Zhenyu Foodstuff Co., Ltd..	
Xuzhou Jinjiang Foodstuffs Co., Ltd..	
Yancheng Haiteng Aquatic Products & Foods Co., Ltd..	
Yancheng Hi–King Agriculture Developing Co., Ltd..	
Yancheng Yaou Seafood Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Retail Carrier Bags[3].	
A–570–886	8/1/04 - 7/31/05
Ampac Packaging (Nanjing) Co..	
Countervailing Duty Proceedings.	
BRAZIL: Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products.	
C–351–829	1/1/04 - 12/31/04
Companhia Siderurgica Nacional.	
Companhia Siderurgica de Tubarao.	
Usinas Siderurgicas de Minas Gerais.	
Companhia Siderurgica Paulista.	
Suspension Agreements.	
None..	

[1] Company inadvertently omitted from initiation notice that published on June 30, 2005 (70 FR 37749).
[2] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part. Additionally, for those companies for which we are conducting a new shipper review, this administrative review will only cover entries not covered by those new shipper reviews.
[3] Company inadvertently omitted from initiation notice that published on September 28, 2005 (70 FR 56631).

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(I).

Dated: October 19, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office 4for Import Administration.

[FR Doc. E5–5897 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Areas Global TB Vaccine Foundation, Notice of Decision on Application for Duty–Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, D.C.

Docket Number: 05–036. Applicant: Areas Global TB Vaccine Foundation. Instrument: Flow Cytometer. Manufacturer: PartecGmbH, Germany. Intended Use: See notice at 70 FR 48372, August 17, 2005.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) true volumetric absolute cell counting, (2) validation of assay cell numbers that can be correlated to FDA approved cell counting devices, (3) stable lasers to permit use of the samesettings regardless of the day or operator and (4) that the user can make corrections to the laser.

The National Institutes of Health advises: (1) these capabilities are pertinent to the applicant's intended

purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program ManagerStatutory Import Programs Staff.

[FR Doc. E5–5895 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and, Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, D.C.

Docket Number: 05–037. Applicant: California Institute of Technology, 1200 E. California Blvd., Pasadena, CA 91125. Instrument: Dual Beam SEM/FIB System, Model 200 Nanolab. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to modify and analyze delicate nano–devices as well as to prepare more conventional cross-sectional thin sections for analytical electron microscopy. The nanostructures to be modified will largely be developed within Caltech's microfabrication facilitiesand the delivered software system will be re–written to enable more precise patterning and alignment of nanostructures. Metallorganic gases can be delivered to the sample surface through a gas manifold for metal deposition and etching gases can be injected to perform chemically–assisted focused ion etching. A laser interferometer stage will enable the alignment of nanostructures to existing alignment marks for a flexible nanofabrication system. A large variety of chemical analysis sensors will further extend the capabilities of the system.Application accepted by Commissioner of Customs: September 27, 2005.

Docket Number: 05–044. Applicant: Tufts University, 169 Holland Street, Somerville, MA 02144. Instrument: Low-temperature Scanning Tunneling Microscope. Manufacturer: Omicron Nanotechnology, Germany. Intended Use: The instrument is intended to be used to study molecules adsorbed on metal and semiconductor surfaces at low temperature to gain understanding of the physisorption and chemisorption processes. The research is intended to: (1) obtain high–resolution images of moleculesadsorbed on surfaces at temperatures down to 4 Kelvin, (2) record conductance and vibrational data from these systems using the microscope's spectroscopic capabilities and (3) manipulate the positions of molecules using the microscope tip. Application accepted by Commissioner of Customs: October 5, 2005.

Gerald A. Zerdy,

Program ManagerStatutory Import Programs Staff.

[FR Doc. E5–5896 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Princeton University, Notice of Decision on Application for Duty–Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, D.C.

Docket Number: 05–035. Applicant: Princeton University, Princeton, New Jersey. Instrument: Geiger Mode Ionizing Counters (1350). Manufacturer: pol.hi.tech, S.R.I, Italy. Intended Use: See notice at 70 FR 48372, August 17, 2005.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: These are compatible accessories for an existing instrument. Also referred to as limited streamer tubes, they are to be interfaced to the Stanford Linear Accelerator to study all the systematics of B meson decay processes by international research projects. Extreme reliability is an essential feature, since once assembled, they cannot be removed for replacement. The only domestic assembly facility for producing large numbers of these devices (at the University of Houston) has been decommissioned. The accessories are pertinent to the intended uses and we know of no domestic accessories which can be readily adapted for this purpose. We know of no other instrument or apparatus of equivalent scientific value which is being manufactured in the United States.

Gerald A. Zerdy,

Program ManagerStatutory Import Programs Staff.

[FR Doc. E5–5894 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

State University of New York, Stony Brook, et al., Notice of Consolidated Decision on Applications for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, D.C.

Docket Number: 05–032. Applicant: State University of New York, Stony Brook. Instrument: Electron Microscope, Model JEM–2200FS. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 70 FR 48372, August 17, 2005. Order Date: September 2, 2003.

Docket Number: 05–034. Applicant: The University of Southern Mississippi, Hattiesburg. Instrument: Electron Microscope, Model JEM–2100. Manufacturer: JEOL, Ltd., Japan. Intended Use:See notice at 70 FR 48372, August 17, 2005. Order Date: October 13, 2004.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United

States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument OR at the time of receipt of application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program ManagerStatutory Import Programs Staff.

[FR Doc. E5–5893 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–427–603)

Preliminary Results of Full Sunset Review: Brass Sheet and Strip from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April, 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty (''CVD'') order on brass sheet and strip from France, 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 and an adequate substantive response filed on behalf of the domestic interested parties and an adequate response from respondent interested parties, the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). As a result of our analysis, the Department preliminarily finds that revocation of the CVD order would likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Preliminary Results of Review'' section of this notice.

EFFECTIVE DATE: October 25, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown or David Goldberger, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2849 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2005, the Department initiated a sunset review of the CVD order on brass sheet and strip from France pursuant to section 751(c) of the Act. *See Notice of Initiation of Five-year (''Sunset'') Reviews*, 70 FR 16800 (April 1, 2005). The Department received a notice of intent to participate from the following domestic interested parties: Heyco Metals, Inc. (''Heyco''); Olin Corporation – Brass Group (''Olin''); Outokumpu American Brass (''Outokumpu''); PMX Industries, Inc. (''PMX''); Revere Copper Products, Inc. (''Revere''); Scott Brass (''Scott''); the International Association of Machinists and Aerospace Workers; United Auto Workers (Local 2367 and Local 1024); and United Steelworkers of America (AFL/CIO–CLC) (hereinafter, collectively ''domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic brass mills, rerollers, and unions engaged in the production of brass sheet and strip in the United States.

The Department received substantive responses from the domestic interested parties as well as from Gravograph Industrie International (''Gravograph''); Trefimetaux, S.A. (''TMX''); and the Government of France (''GOF''). On May 24, 2005, after analyzing the substantive and rebuttal responses of interested parties, consistent with 19 CFR 351.218(e)(1)(ii)(A) and (C), the Department determined to conduct an expedited review of this countervailing duty order on the basis that the two respondent companies, Gravograph and TMX, accounted for less than 50 percent of the exports of subject merchandise from France to the United States during the sunset review period.

Subsequently, the GOF and the European Union (''EU'') requested that the Department reconsider its adequacy determination on the basis that the customs data concerning imports (U.S. data) and exports (French data) do not reliably reflect the actual volume of imports of brass sheet and strip.[1] On June 10, 2005, domestic interested parties submitted a letter reiterating earlier comments asserting that the French respondents failed to submit all of the required information in their responses and failed to satisfy the 50–percent export threshold set forth in the regulations. Thus, according to domestic interested parties, the Department's determination to conduct an expedited review was correct and should be maintained.

On June 14, 2005, the Department met with representatives from the EU and the GOF to discuss their request that the Department reconsider its decision to conduct an expedited review in the instant case.[2] On July 11, 2005, the GOF provided additional information concerning the statistics on French brass sheet and strip and again requested that the Department reconsider its adequacy determination. On July 13, 2005, the EU expressed its support for the GOF's request for a full sunset review noting that, in view of the manifest discrepancies in the various sources of data, for which the GOF has been pro–active in trying to find a solution, it would be wrong to deny all the parties a full and comprehensive investigation of the facts. Finally, on July 14, 2005, the domestic interested parties reiterated the view that the Department should conduct an expedited sunset review in this proceeding arguing that no justification exists for the Department to reverse its earlier conclusion.

The Department determined that the sunset review of the CVD order on brass sheet and strip from France is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on July 27, 2005, the Department extended the time limit for the completion of the final results of this review until not later than October 28, 2005, in accordance with section 751(c)(5)(B) of the Act. *See Brass Sheet and Strip from Germany, Brazil, and France: Extension of Final Results of Expedited Sunset Review of the Antidumping and Countervailing Duty Orders*, 70 FR 43395 (July 27, 2005). However, when the Department determined to conduct a full sunset review of this order, the preliminary results of the full sunset review were extended until October 18, 2005.

Scope of the Order

The merchandise subject to the CVD order is coiled, wound–on-reels (traverse wound), and cut–to-length

[1] *See* letters of June 8, 2005, and June 9, 2005, respectively.

[2] *See* June 16, 2005, Memorandum to the File, From Kelly Parkhill, concerning the Sunset Review of the Countervailing Duty Order on Brass Sheet and Strip from France.

The Department reconsidered its original determination, and, on August 12, 2005, determined to conduct a full review of this order, as provided for at section 751(c)(5)(A) and (C) of the Tariff Act of 1930 and at 19 CFR 351.218(e)(2).

brass sheet and strip (not leaded or tinned) from France. The subject merchandise has, regardless of width, a solid rectangular cross section over 0.0006 inches (0.15 millimeters) through 0.1888 inches (4.8 millimeters) in finished thickness or gauge. The chemical composition of the covered products is defined in the Copper Development Association (''C.D.A.'') 200 Series or the Unified Numbering System (''U.N.S.'') C2000; this order does not cover products with chemical compositions that are defined by anything other than C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule (≥HTS'') item numbers 7409.21.00 and 7409.29.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 18, 2005, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy likely to prevail if the order were revoked is 0.19 percent *ad valorem*.

Interested parties may submit case briefs no later than December 7, 2005, in accordance with 19 CFR 351.309 (c)(1)(i). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310 (c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than December 12, 2005, in accordance with 19 CFR 351.309 (d). Any hearing, if requested, will be held on or about December 14, 2005. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than February 25, 2006. However, February 25, 2006, falls on Saturday. It is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of these final results is February 27, 2006.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 18, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5898 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: The inventions listed below are owned in whole by the U.S. Government, as represented by the Department of Commerce. The inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188 , fax 301–869–2751, or e-mail: *mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

[NIST Docket Number: 02–008D]

Title: Method for Selective Electroless Attachment of Contacts to Electrochemically-active Molecules.

Abstract: A solution-based method for attaching metal contacts to molecular films is described. The metal contacts are attached to functional groups on individual molecules in the molecular film. The chemical state of the functional group is controlled to induce electroless metal deposition preferentially at the functional group site. The functionalized molecules may also be patterned on a surface to give spatial control over the location of the metal contacts in a more complex structure. Spatial control is limited only by the ability to pattern the molecular film. To demonstrate the feasibility of this concept, self-assembled monolayers of model, molecular-electronic compounds have been prepared on gold surfaces, and these surfaces were subsequently exposed to electroless deposition plating baths. These samples exhibited selective metal contact attachment, even on patterned surfaces.

[NIST Docket Number: 04–018US]

Title: Portable LED-illuminated Radiance Source.

Abstract: With the development of light-emitting diodes (LED) at many different wavelengths, compact, quasi-monochromatic sources can be developed for radiometric uses. Temporally stable, spatially uniform and radiometically calibrated sources are needed in many different applications. Instead of using large integrating sphere sources, such radiance sources can also be used to measure the size-of-source effect (SSE) in radiation thermometers. These compact sources can be used for both initial characterizations and for periodic measurements to determine that the SSE has not changed. This invention provides the design, construction, and characterization of a LED-based radiance source (LRS). The performance of the LRS including spatial uniformity, temporal stability, spectral stability, and radiance are addressed. Different diffuser materials are assessed for spatial and angular uniformity.

Dated: October 19, 2005.

William Jeffrey,

Director.

[FR Doc. 05–21286 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Monday, November 14, 2005, 9 a.m. to 5:30 p.m.; Tuesday, November 15, 2005, 9 a.m. to 5:30 p.m.; Wednesday, November 16, 2005, 9 a.m. to 5:30 p.m.; Thursday, November 17, 2005, and Friday, November 18, 2005, 9 a.m. to 3 p.m. The Judges Panel is composed of ten members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review and make recommendations regarding the Malcolm Baldrige National Quality Award program, processes, and procedures within the guidelines set forth by the Baldrige Program's Board of Overseers.

DATES: The meeting will convene November 14, 2005 at 9 a.m. and adjourn at 3 p.m. on November 18, 2005. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Room A1038, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The agenda will include review of the site visit process, review the final judging process and meeting procedures, review of feedback discussion approach with site visit team leaders, final judging of 2005 applicants, learning and improvements for 2006 judging cycle, update on the 2006 program and review 2006 judges calendar. The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 20, 2004, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: October 19, 2005.

William Jeffrey,

Director.

[FR Doc. 05–21285 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071105E]

Endangered Species; File No. 1475

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the Florida Fish and Wildlife Conservation Commission (FFWCC), Florida Marine Research Institute (Richard E. Matheson, Principal Investigator), 1481 Market Circle, Unit 1, Port Charlotte, FL 33953 has been issued a permit to take smalltooth sawfish, *Pristis pectinata*, for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 21, 2004, notice was published in the **Federal Register** (69 FR 29274) that a request for a scientific research permit to take smalltooth sawfish had been submitted by the above-named organization. On January 26, 2005, notice was published in the **Federal Register** (70 FR 3682) that a request to amend the permit application to include takes of loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*),green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*) and leatherback (*Dermochelys coriacea*) turtles. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 20, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–21303 Filed 10–24–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Advisory Group Meeting of the U.S. Strategic Command

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice of closed meeting.

SUMMARY: The Strategic Advisory Group (SAG) will meet in a closed session on December 8 and 9, 2005. The mission of the SAG is to provide timely advice on scientific, intelligence, technical, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans. Full development of the topics will require discussion of information classified in accordance with Executive Order 12958, dated April 17, 1995, as amended March 25, 2003. Access to this information must be strictly limited to personnel having the requisite security clearances and the specific need-to-know. Unauthorized disclosure of the information to be discussed at the TAG meeting could cause serious damage to our national defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act (5 U.S.C., App. 2), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. Section 552b(c), and

that, accordingly, this meeting will be closed to the public.

DATES: December 8–9, 2005.

ADDRESSES: USSTRATCOM, 901 SAC Blvd Ste 1F7, Offutt AFB NE. 68113–6030.

FOR FURTHER INFORMATION CONTACT: Ms. Connie Leinen, Executive Director, (402) 294–4102.

SUPPLEMENTARY INFORMATION: Jerome Mahar, Joint Staff, (703) 614–6465.

Dated: October 19, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–21246 Filed 10–24–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Board Membership

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Air Force.

DATES: Effective November 18, 2005.

FOR FURTHER INFORMATION CONTACT: Greg Price, Air Force Senior Leader Management Office, 2221 South Clark Street, CP6, Suite 500, Arlington VA 22202.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives. The members of the Performance Review Board for the U.S. Air Force are:

1. Lt Gen Duncan J. McNabb, Commander, Air Mobility Command.
2. Lt Gen Stephen G. Wood, Deputy Chief of Staff, Plans and Programs, Headquarters, U.S. Air Force.
3. Lt Gen Terry L. Gabreski, Vice Commander, Air Force Materiel Command.
4. Mr. Michael A. Aimone, Assistant Deputy Chief of Staff, Installations and Logistics, Headquarters, U.S. Air Force.
5. Mr. Howard G. Becker, Deputy Director, Administration and Management, Office of the Secretary of Defense and Director, Washington Headquarters Services.
6. Mr. Roger M. Blanchard, Assistant Deputy Chief of Staff, Personnel, Headquarters, U.S. Air Force.
7. Mr. Lawrence B. Henry, Jr., Director, Financial Management and Resource Oversight, National Reconnaissance Office.
8. Ms. Letitia A. Long, Deputy Under Secretary of Defense for Policy, Requirements, and Resources, Office Of The Under Secretary Of Defense (Intelligence).
9. Mr. Michael L. Rhodes, Assistant Deputy Commandant for Manpower and Reserve Affairs, U.S. Marine Corps.
10. Ms. Cheryl J. Roby, Deputy Assistant Secretary of Defense (Programs and Evaluation), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence).
11. Mr. James E. Short, Deputy Assistant Secretary for Financial Operations, Office of the Assistant Secretary for Financial Management and Comptroller, Headquarters, U.S. Air Force.
12. Ms. Barbara A. Westgate, Executive Director, Air Force Materiel Command.

Bruno Leuyer,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. 05–21258 Filed 10–24–05; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army is proposing to add a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on November 25, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, Attn: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 17, 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: October 17, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

A0600–20 DCS, G–1

SYSTEM NAME:

Sexual Assault Data Management System (SADMS) Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, Staff and field operating agencies, major commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, who has been identified as the victim of a sexual assault allegedly committed by a member of the Armed Forces. Any member of the Armed Forces who has been identified as the victim of a sexual assault allegedly committed by a civilian. Any individual, military or civilian, who has been identified as the perpetrator of an alleged sexual assault against a member of the Armed Forces. Any member of the Armed Forces who has been identified as the perpetrator of an alleged sexual assault against a civilian.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), date of birth, demographic information, and Service data; investigation related information which may include summary of the assault, data from police reports, DNA processing dates; documents created as a result of the assistance provided; medical records data relating to initial and final

treatment dates and aggregate count of intermediate medical treatment contacts with the victim; similar records/reports relating to victim support extended by installation and/or unit advocates; and reports of actions taken by commanders against offenders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 108–375, Section 577; 10 U.S.C. 3013, Secretary of the Army; DoD Directive 1030.1, Victim and Witness Assistance; AR 27–10 Military Justice; AR 40–66 Medical Record Administration and Health Care Documentation; AR 195–2 Criminal Investigation Activities; AR 608–18, Family Advocacy Program; AR 600–20, Army Command Policy; and EO 9397 (SSN).

PURPOSE(S):

To provide a centralized application to document all relevant data regarding sexual assault cases, including health care provided to victims who are members of the Armed Forces and are treated at Army Medical Treatment Facilities, resolution of the investigation, and disciplinary action, if any; and to provide compilation of statistical data and management reports.

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 Congress and other agencies, as appropriate, in compliance with Public Law 108–375.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users' identification and password to protect the system from unauthorized access. User identification and passwords are changed at random times. The system employs Secure Socket Layer (SSL) certificate and encryption of provide further protection from unauthorized access to personal data. During non-duty hours, military police or contract guard patrols ensure protection against unauthorized access.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Factors Division, Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR–HF, 300 Army Pentagon, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR–HF, 300 Army Pentagon, Washington, DC 20310–0300.

For verification purposes, individual should provide his/her full name, current address and telephone number and other personal identifying data that would assist in locating the records. The inquiry must be signed.

RECORDS ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Deputy Chief of Staff, Army G–1, ATTN: DAPE–HR–HF, 300 Army Pentagon, Washington, DC 20310–0300.

Individuals should provide his/her full name, current address and telephone number and other personal identifying data that would assist in locating the records. The inquiry must be signed.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are derived from data originally maintained in the following official Army systems: Army Criminal Investigation Intelligence System (ZCI2); Central Operations Police Suite (COPS); Sexual Assault Response Program Tracking Application (SARPTA); Sexual Assault Training and Tracking System (SATTS); and Army Court Martial Information System (ACMIS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system of records is a compilation of information from other Department of Army systems of records. To the extent that copies of exempt records from those other systems of records are entered into SADMS, the Army G–1 hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 05–21112 Filed 10–24–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education .

ACTION: Notice—Computer Matching between the Department of Education and the Department of Justice.

SUMMARY: Section 421(a)(1) of the Controlled Substances Act (21 U.S.C. 862(a)(1)) includes provisions regarding the judicial denial of Federal benefits. Section 421 of the Controlled Substances Act, which was originally enacted as section 5301 of the Anti-Drug Abuse Act of 1988, but amended and redesignated as section 421 of the Controlled Substances Act by section 1002(d) of the Crime Control Act of 1990, Public Law 101–647 (hereinafter referred to as ''Section 5301'') authorizes Federal and State judges to deny certain Federal benefits (including student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA)) to individuals convicted of drug trafficking or possession.

In order to ensure that HEA Title IV student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, the Department of Justice and the Department of Education implemented a computer matching program. The 18-month computer matching agreement (CMA) was recertified for an additional 12 months on December 18, 2004. The 12-month recertification of the CMA will automatically expire on December 18, 2005.

The Department of Education must continue to obtain from the Department of Justice identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the continued operation of the computer matching program and to provide certain required information concerning the computer matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (*see* 54 FR 25818, June 19, 1989), and OMB Circular A–130, the following information is provided:

1. *Names of Participating Agencies.* The Department of Education (ED) (recipient agency) and the Department of Justice (DOJ) (source agency).

2. *Purpose of the Match.* This matching program is designed to assist ED in enforcing the sanctions imposed under section 5301.

3. *Authority for Conducting the Matching Program.* Under section 5301, ED must deny Federal benefits to any individual upon whom a Federal or State court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under Title IV of the HEA is a Federal benefit under section 5301 and ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

The President's plan for immediate implementation of section 5301 (Pub. L. 100–690), as transmitted to the Congress on August 30, 1989 in accordance with section 5301(g), directed DOJ to act as an information clearinghouse for Federal agencies. While DOJ provides information about section 5301 individuals who are ineligible for Federal benefits to the General Services Administration (GSA) for inclusion in GSA's List of Parties Excluded from Federal Procurements and Nonprocurement Programs, DOJ and ED have determined that matching against the DOJ database is more efficient and effective than access to the GSA List. The DOJ database has specific information about the Title IV, HEA programs for which individuals are ineligible as well as the expiration of the debarment period, making the DOJ database more complete than the GSA List. Both of these elements are essential for a successful match.

4. *Categories of Records and Individuals Covered by the Match.* ED will submit for verification, records from its Central Processing System files (Federal Student Aid Application File (18–11–01)), the social security number (SSN), and other identifying information for each applicant for HEA Title IV student financial assistance. ED will use the SSN, date of birth, and the first two letters of an applicant's last name for the match.

The DOJ Denial of Federal Benefits Clearinghouse System (DEBAR) (OJP–0013) contains the names, social security numbers, dates of birth, and other identifying information regarding individuals convicted of Federal or State offenses involving drug trafficking or possession of a controlled substance who have been denied Federal benefits by Federal or State courts. This system of records also contains information concerning the specific program or programs for which benefits have been denied, as well as the duration of the period of ineligibility. DOJ will make available for the matching program the records of only those individuals who have been denied Federal benefits under one or more of the Title IV, HEA programs.

5. *Effective Dates of the Matching Program.* The matching program will become effective on December 19, 2005; or 40 days after a report concerning the matching program has been transmitted to OMB and transmitted to the Congress along with a copy of the CMA; or 30 days after publication of this notice in the **Federal Register**, whichever date is last. The matching program will continue for 18 months after the effective date of the CMA and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. *Address for Receipt of Public Comments or Inquiries.* Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5454. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 21 U.S.C. 862(a)(1); 5 U.S.C. 552a.

Dated: October 18, 2005.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 05–21305 Filed 10–24–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, November 5, 2005, 8:30 a.m.–12 p.m.

ADDRESSES: Crosby Township Senior Center, 8910 Willey Road, Harrison, Ohio 45030.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail: *djsarno@theperspectivesgroup.com*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m.—Call to Order.
8:35 a.m.—Updates and Announcements.
8:45 a.m.—Legacy Management and Institutional Controls Plan.
10:15 a.m.—Break.
10:30 a.m.—Local Stakeholder Organization (LSO) Update.

10:45 a.m.—History/Education Roundtable Results and Next Steps.
11:05 a.m.—Fernald Citizens' Advisory Board History Update and Next Steps.
11:25 a.m.—Friends of Fernald Group.
11:50 a.m.—Public Comment.
12 p.m.—Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on October 19, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–21288 Filed 10–24–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, November 15, 2005, 8 a.m.–6 p.m. Wednesday, November 16, 2005, 8 a.m.–5 p.m.

Opportunities for public participation will be held Tuesday, November 15, from 12:15 to 12:30 p.m. and 4:45 to 5 p.m.; and Wednesday, November 16, from 11:45 a.m. to 12 p.m. and 4 to 4:15 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Eagle Rock Art Museum, 300 South Capital, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Shannon A. Brennan, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1216, Idaho Falls, ID 83401. Phone (208) 526–3993; Fax (208) 526–1926 or e-mail: *Shannon.Brennan@nuclear.energy.gov* or visit the Board's Internet home page at: *http://www.ida.net/users/cab*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Shannon A. Brennan for the most current agenda):

- Idaho Cleanup Project Lifecycle Baseline.
- Comprehensive Environmental Response, Compensation, and Liability Act—Five-Year Review.
- Tribal concerns along waste corridors.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Shannon A. Brennan at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Shannon A. Brennan, Federal Coordinator, at the address and phone number listed above.

Issued at Washington, DC on October 19, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–21289 Filed 10–24–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 9, 2005, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Haul Road Update.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above.

Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on October 19, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–21290 Filed 10–24–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 05–58–NG, 05–57–NG, 05–60–NG, 05–59–NG, 05–61–NG, 05–62–LNG, 05–63–NG, 05–52–NG, 05–64–NG, 05–66–NG, 05–65–NG, 05–67–NG, 05–68–NG, 05–72–NG, 05–70–NG, and 05–71–NG]

Office of Fossil Energy; Transalta Energy Marketing Corp., Husky Gas Marketing Inc., Cinergy Marketing & Trading, LP, Cinergy Canada, Inc., Conocophillips Company, Enterprise Products Operating L.P., Oxy Energy Canada, Inc., Oxy Energy Canada, LLC, TXU Portfolio Management Company, L.P., Wisconsin Public Service Corporation, Portland General Electric Company, Pacific Gas and Electric Company, Public Utility District No. 1 of Clark County, Washington, Emera Energy Services, Inc., Tristar Producers Services of Texas, L.P., Energia de Baja California, S. de R.L. C.V.; Orders Granting and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during August and September 2005, it issued Orders granting and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on October 18, 2005.

R. F. Corbin,

Manager, Natural Gas Regulation, Office of Natural Gas Regulatory Activities, Office of Fossil Energy.

Appendix—Orders Granting Import/Export Authorizations

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
2118	8–3–05 ...	TransAlta Energy Management Corp., 05–58–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on October 1, 2005, and extending through September 30, 2007.
2119	8–3–05 ...	Husky Gas Marketing Inc., 05–57–NG.	250 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on August 10, 2005, and extending through August 9, 2007.
2120	8–22–05	Cinergy Marketing & Trading, LP, 05–60–NG.	500 Bcf		Import and export a combined total of natural gas from and to Mexico, beginning on November 1, 2005, and extending through October 31, 2007.
2121	8–25–05	Cinergy Canada, Inc., 05–59–NG.	730 Bcf		Import and export a combined total of natural gas from and to Mexico, beginning on September 1, 2005, and extending through October 31, 2007.
2122	9–6–05 ...	ConocoPhillips Company, 05–61–NG.	600 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on August 27, 2005, and extending through August 26, 2007.
2123	9–19–05	Enterprise Products Operating L.P., 05–62–LNG.	150 Bcf		Import LNG from various international sources, beginning on September 15, 2005, and extending through September 14, 2007.
2109–A	9–19–05	OXY Energy Canada, LLC, 05–52–NG.			Vacate blanket authority.
2124	9–19–05	Oxy Energy Canada, Inc., 05–63–NG.			Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2005, and extending through June 30, 2007.
2125	9–19–05	TXU Portfolio Management Company, L.P., 05–64–NG.	240 Bcf	240 Bcf	Import and export a combined total of natural gas from and to Canada, and import and export a combined total of natural gas from and to Mexico, beginning on July 27, 2005, and extending through July 26, 2007.
2126	9–19–05	Wisconsin Public Service Corporation, 05–66–NG.	36.5 Bcf		Import natural gas from Canada, beginning on October 1, 2005, and extending through September 30, 2007.
2127	9–23–05	Portland General Electric Company, 05–65–NG.	135 Bcf	45 Bcf	Import and export natural gas from and to Canada, beginning on November 3, 2005, and extending through November 2, 2007.
2128	9–23–05	Pacific Gas and Electric Company, 05–67–NG.	600 Bcf		Import natural gas from Canada, beginning on November 1, 2005, and extending through October 31, 2007.

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
2129	9–23–05	Public Utility District No. 1 of Clark County, Washington, 05–68–NG.	65 Bcf		Import and export a combined total of natural gas from and to Mexico, beginning on October 1, 2005, and extending through September 30, 2007.
2130	9–30–05	Emera Energy Services, Inc. 05–72–NG.	400 Bcf		Import and export a combined total of natural gas from and to Mexico, beginning on September 1, 2005, and extending through October 31, 2007.
2131	9–30–05	Tristar Producers Services of Texas, L.P., 05–70–NG.		3,771 Bcf	Export natural gas to Mexico, beginning on September 30, 2005, and extending through September 29, 2007.
2132	9–30–05	Energia De Baja California, S. de R.L. C.V. 05–71–NG.		43.1 Bcf	Export natural gas to Mexico, beginning on December 11, 2005, and extending through December 10, 2007.

[FR Doc. 05–21292 Filed 10–24–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 16, 2005 8:30 a.m. to 5 p.m.; Thursday, November 17, 2005 8:30 a.m. to 5 p.m.; Friday, November 18, 2005 8:30 a.m. to 1 p.m.

ADDRESS: Crown Plaza Washington-National Airport (Crystal City), 1489 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Director, Central Regional Office, Office of Technology Development, Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone (303) 275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- EERE Programmatic Update.
- Implementation of Energy Policy Act of 2005.
- EERE Organizational Update and Regional Office Consolidation.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 19, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–21287 Filed 10–24–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974: Notice of New System of Records

October 19, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of new system of records.

SUMMARY: The Federal Energy Regulatory Commission (the Commission), under the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, is publishing a description of a new system of records.

ADDRESSES: Comments should be directed to the following address: Commission Security and Safety Officer, Security and Safety Office, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Tod M. Henby, Commission Security and Safety Officer, Security and Safety Office, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6030.

SUPPLEMENTARY INFORMATION:

I. Report on the New System

A. Background

The Privacy Act of 1974, 5 U.S.C. 552a, requires that each agency publish a notice of the existence and character of each new or altered ''system of records.'' 5 U.S.C. 552a(a)(5). This Notice identifies and describes the Commission's new system of records. A copy of this report has been distributed to the Speaker of the House of Representatives and the President of the Senate as the Act requires.

The Commission has adopted a new system of records under the Privacy Act of 1974. This system does not duplicate any existing agency system. The notice includes for the system of records the name; location; categories of individuals on whom the records are maintained; categories of records in the system; authority for maintenance of the system; each routine use; the policies and practices governing storage, retrievability, access controls, retention and disposal; the title and business address of the agency official responsible for the system of records; procedures for notification, access and contesting the records of each system; and the sources for the records in the system. 5 U.S.C. 552(a)(4).

B. New System of Records

FERC–55 Personal Identity Verification (PIV) Records.

FERC–55

SYSTEM NAME:

Personal Identity Verification Records.

SECURITY CLASSIFCATION:

Unclassified.

SYSTEM LOCATION:

Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, consultants and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, individual's address, individual's telephone number, individual's office of assignment, individual's signature, individual's digital photograph, individual's digital and/or paper fingerprint images, individual's social security number, results of individual's background check, PIV sponsor's signature, PIV credential number and PIV expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–20.103, HSPD–12/FIPS 201.

PURPOSE(S):

For Federal Government identity management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To document the identity and background of agency employees, contractors and consultants.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer.

RETRIEVABILITY:

By individual name, PIV credential number.

SAFEGUARDS:

Paper records are in lockable file cabinets in a lockable room with access limited to those employees whose official duties require access; computer data is password protected and backed up.

RETENTION AND DISPOSAL:

Records are maintained for 3 years after final separation. Identification credentials are destroyed after return to security department.

SYSTEM MANAGER(S) AND ADDRESS:

Commission Security and Safety Officer, Security and Safety Office, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

NOTIFICATION PROCEDURE:

Requests from individuals to determine if a system of records contains information about them should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

Employee, contractor, or consultant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Magalie R. Salas,

Secretary.

[FR Doc. 05–21270 Filed 10–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Notice of Proposed Tariff Change

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of informal meeting and comment opportunity.

SUMMARY: The Southwestern Power Administration (Southwestern) is revising its Open Access Transmission Service Tariff (Tariff). Southwestern's existing Tariff was approved by the Federal Energy Regulatory Commission (Commission) on May 13, 1998. Southwestern intends to update certain Tariff provisions from its original Tariff filing to reflect the agreement executed between Southwestern and the Southwest Power Pool Regional Transmission Organization (SPP RTO), and to further clarify the limitation Southwestern has in the use of generation from facilities owned and operated by the U.S. Army Corps of Engineers. Publication of this **Federal Register** notice announces a public meeting and an opportunity for informal comment on Southwestern's revised Tariff prior to filing with the Commission.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end December 9, 2005. Southwestern will hold an informal public meeting to discuss the proposed Tariff revisions on November 30, 2005. Beginning at 10 a.m., Southwestern will accept oral and written comments at this meeting and will also accept written comments any time during the informal comment period. Persons interested in attending this meeting should indicate in writing their intent to do so by submitting a letter or e-mail to the address below by November 25, 2005. If Southwestern receives no notifications of intent to attend this meeting, the meeting will be cancelled.

ADDRESSES: The public meeting will be held in Southwestern's offices, Room 1460, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103. All written comments should be submitted to Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, or by e-mail to *swparates@swpa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION: Originally established by Secretarial Order No. 1865 dated August 31, 1943, Southwestern is an agency within the U.S. Department of Energy which was created by an Act of the U.S. Congress, entitled the Department of Energy Organization Act, Public Law No. 95–91, dated August 4, 1977. Southwestern is not a public utility under sections 205 and 206 of the Federal Power Act and is not specifically subject to the requirements of the Federal Energy Regulatory Commission Order Nos. 888, *et al.* Southwestern is a transmitting utility subject to sections 205 and 211 of the Federal Power Act, as amended by the Energy Policy Acts of 1992 and 2005. Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma, and Texas.

Southwestern's marketing area includes these States plus Kansas and Louisiana. Southwestern markets Federal power and energy, and owns and operates a transmission system to integrate its hydroelectric resources in order to reliably deliver such power and energy. Southwestern provides transmission services for the transmission of non-Federal power and energy across Southwestern's transmission system only to the extent that capacity is available over and above that required to fulfill Southwestern's mission and obligations under section 5 of the Flood Control Act of 1944. Nothing in the proposed tariff is intended to alter, amend, or abridge Southwestern's statutory obligation to market Federal power and to repay the Federal investment in the hydroelectric generation projects from which it markets power as well as the investment in its associated transmission system.

On March 31, 2005, Southwestern and the SPP RTO entered into an agreement, which became effective April 1, 2005, and which provides for the SPP RTO to administer Southwestern's Tariff, provide regional reliability council services, scheduling services, operating reserve sharing, Open Access Same Time Information System (''OASIS'') administration, and reliability coordination. The agreement, accepted for filing by the Commission as SPP RTO tariff Attachment AD, also facilitates the reciprocal use of Southwestern's and the SPP RTO's transmission facilities and provides for Southwestern's participation in regional transmission expansion. To provide consistency with the regional practices of the SPP RTO, Southwestern has made changes to its Tariff scheduling, transmission service application, available transmission capability, and facilities studies timing requirements. Changes have also been made to the provisions of Southwestern's Tariff concerning generation redispatch that clarify Southwestern's limitations in the use of its generation resources to provide redispatch under Southwestern's Tariff. The water used to supply the energy from Southwestern's hydroelectric generation resources is limited, and the use of such water and generation resources from Federal hydroelectric projects within congressionally authorized purposes is dictated by Federal statute. These limitations are consistent with the agreement between Southwestern and the SPP RTO.

Following review of the oral and written comments and the information gathered in the course of the proceedings, the Administrator will submit the finalized Tariff to the Commission and request a declaratory order that the Tariff meets Commission requirements as set forth in Commission Order No. 888, *et al.*, to the extent consistent with applicable law. The revised Tariff is posted on Southwestern's Web site at *http://www.swpa.gov.* Southwestern must receive written comments by the end of the informal comment period to ensure they are considered in Southwestern's filing with the Commission.

Dated: October 14, 2005.

Michael A. Deihl,

Administrator.

[FR Doc. 05–21291 Filed 10–24–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7987–8]

Meeting of the National Drinking Water Advisory Council—Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, The Federal Advisory Committee Act, notice is hereby given for a meeting of the National Drinking Water Advisory Council (NDWAC or Council). This Council was authorized by the Safe Drinking Water Act in 1974 (42 U.S.C. 300f *et seq.*) to support the Environmental Protection Agency in performing its duties and responsibilities related to the national drinking water program. The principal items on the Agenda for this meeting include: A report from the Council's Working Group on the near-term efforts to revise performance measures and indicators for the drinking water program; a presentation and discussion of the water program's sustainable infrastructure initiative; an update on the implementation of the recommendations in the Report on Water Security Practices, Incentives, and Measures, which the Council sent to EPA's Administrator in June 2005. Other EPA drinking water program activities will be addressed if sufficient time is available.

DATES: The Council meeting will be held on November 17, 2005, from 9 a.m. to 5:30 p.m. and November 18, 2005, from 8:30 a.m. until 11 a.m., Pacific Standard Time.

ADDRESSES: The meeting will be held at The Westin Hotel, 333 East Ocean Boulevard, Long Beach California 90802.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, or submit a written statement should contact Clare Donaher by phone at (202) 564–3787, by e-mail at *donaher.clare@epa.gov,* or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Council encourages the public's input and will allocate one hour from 4:30–5:30 p.m. on November 17, 2005 for his purpose. Oral statements will be limited to five minutes. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Clare Donaher by telephone at (202) 564–3787 no later than November 9, 2005. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received by November 7, 2005 will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information. Any person needing special accommodations at this meeting, including wheelchair access, should contact Clare Donaher (see **FOR FURTHER INFORMATION CONTACT** section). Notification of at least five (5) business days before the meeting is preferred so that appropriate special accommodations can be made.

Dated: October 19, 2005.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 05–21263 Filed 10–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7744–3]

National Pollution Prevention and Toxics Advisory Committee (NPPTAC); Notice of Public Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2 (Public Law 92–463), EPA gives notice of a public teleconference of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the teleconference is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT). The meeting is open to the public. However, due to limited space, seating will be on a first come basis.

DATES: The National Pollution Prevention and Toxics Advisory Committee (NPPTAC) will meet on November 17, 2005, via teleconference from noon to 3 p.m. eastern time.

Requests to participate in the meeting must be received on or before November 10, 2005.

ADDRESSES: This teleconference meeting will be convened in Conference Room 4225, EPA East Building, 1201 Constitution Ave., NW., Washington, DC 20460. Note that lines may be limited. For further information concerning the meeting or how to obtain the telephone number, please contact either of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline@epa.gov*.

For technical information contact: John Alter, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address:*npptac.oppt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individual groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102 Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at*http://www.epa.gov/edocket/* to submit or view public comments, to 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.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number OPPT–2002–0001, include NPPTAC November 2005 meeting in the subject line on the first page of your comment.

1. *By mail*: OPPT Document Control Office, Environmental Protection Agency, 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

2. *Electronically*: At*http://www.epa.gov/edocket/*, search for OPPT–2002–0001, and follow the directions to submit comments.

3. *Hand delivery/courier*: OPPT Document Control Office in EPA East Bldg., Rm. M6428, 1201 Constitution Ave., NW., Washington, DC.

II. Background

The proposed agenda for the NPPTAC teleconference meeting includes: The High Production (HPV) Volume Challenge Program; Pollution Prevention; Risk Assessment; Risk Management; Risk Communication; Nanoscale Materials; Coordination with Tribes and other Stakeholders.

The meeting is open to the public via phone. Note that lines may be limited. For further information concerning the meeting or how to obtain the telephone number, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID numberOPPT–2002–0001, must be received on or before November 10, 2005.

For information on access or services for individuals with disabilities, please contact John Alter at (202) 564–9891 or*npptac.oppt@epa.gov*. To request accommodation of a disability, please contact John Alter, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

List of Subjects

Environmental protection, NPPTAC, Pollution prevention, Toxics, Toxic chemicals, Chemical health and safety, Nanoscale materials.

Dated: October 19, 2005.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 05–21271 Filed 10–24–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7988–1]

Federal Agency Hazardous Waste Compliance Docket (Federal Docket Management System #—SFUND–2005–0004)

AGENCY: Environmental Protection Agency.

ACTION: Notice of twenty-first update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this twenty-first update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, 69 FR 75951, December 20, 2004, which was current as of September 13, 2004. SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Such site evaluation activities will help determine whether the Federal facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 3 additions and 12 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,282.

DATES: This list is current as of February 4, 2005.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the docket can be obtained at *http://www.epa.gov/fedfac* by clicking on the link for *Update #21 to the Federal Agency Hazardous Waste Compliance Docket.*

SUPPLEMENTARY INFORMATION:

Table of Contents

1.0 Introduction
2.0 Revisions of the Previous Docket
3.0 Process for Compiling the Updated Docket
4.0 Facilities Not Included
5.0 Facility Status Reporting
6.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release of a hazardous substance in quantities equal to or greater than the reportable quantity levels established pursuant to CERCLA section 102. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222); October 2, 2001 (66 FR 50185); July 1, 2002 (67 FR44200); January 2, 2003 (68 FR 107); July 11, 2003 (68 FR 41353); December 15, 2003 (68 FR 240); July 19, 2004 (69 FR 42989); and December 20, 2004 (69 FR 75951). This notice constitutes the twenty-first update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 FR 4280 (February 12, 1988) for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the following docket coordinators for information on Regional docket repositories:

Gerardo Millán-Ramos (HBS), US EPA Region 1, #1 Congress St., Suite 1100, Boston, MA 02114–2023, (617) 918–1377.
Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260.
Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4276.
Cesar Lee (3HS50), US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3205.
Gena Townsend (4WD–FFB), US EPA Region 4, 61 Forsyth St., SW, Atlanta, GA 30303, (404) 562–8538.
James Barksdale (4WD–FFB), US EPA Region 4, 61 Forsyth St., SW, Atlanta, GA 30303, (404) 562–8537.
Laura Ripley (SE–5J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–6040.
Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.
D. Karla Asberry (FFSC), US EPA Region 7, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7595.
Stan Zawistowski (EPR–F), US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6255.
Philip Armstrong (SFD–9–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3098.
Ken Marcy (ECL–115), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–2782.
Monica Lindeman (ECL, SACU2), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206)–553–5113.

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, three facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule.

Of the three facilities being added to the docket, none are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation ''103(a)'' in the ''Reporting Mechanism'' column.

EPA's policy is generally not to list on the docket facilities that are small-quantity generators (SQG) that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. However, if a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs and have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and are required by CERCLA section 120(d) to undergo site assessment and evaluation activities, such as a Preliminary Assessment (PA) and, when appropriate, a Site Investigation (SI). All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the EPA Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but do not appear to have notified EPA under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket, among other things, information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under various Federal agency environmental restoration programs may contain information regarding releases of hazardous substances similar to that provided pursuant to section 103. EPA believes that CERCLA section 120(c) authorizes the agency to include on the docket a facility that has provided information to EPA through documents such as a report under a Federal agency environmental restoration program, regardless of the absence of section 103 reporting. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the documents described above that contain reports of releases of hazardous substances.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose requirements on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities ''owned or operated'' by an agency or other instrumentality of the Federal government. EPA interprets this terminology to include facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(a)(2) provides that all ''guidelines, rules, regulations, and criteria'' generally are applicable to facilities ''owned or operated by a department, agency, or instrumentality of the United States * * *'' Also, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that ''owns or operates'' the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having ''jurisdiction, custody, or control'' over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 12 facilities are being deleted from the docket. When facilities are deleted from the docket, it is for reasons such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as a SQG under RCRA (40 CFR 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both

EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an ''O''), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a ''C'') for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRAInfo), and the Superfund Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

EPA assures the quality of the information in the Docket by conducting extensive analysis of the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for facilities that were previously reported. For example, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Joshua A. Barber, Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration Reuse Office (Mail Code 5106G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency that are no longer owned by the Federal Government (including those now owned by State or local governments, private entities, non-governmental organizations, etc).
- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016.
- Facilities that are solely transporters, as reported under RCRA section 3010.

5.0 Facility Status Reporting

EPA has expanded the docket database to include information on the No Further Remedial Action Planned (NFRAP) status of listed facilities. Indicating NFRAP status allows easy identification of facilities that, after submitting all necessary site assessment information, were found to warrant no further involvement on the part of EPA at the time of the status change. Accordingly, the docket database includes the following facility status codes:

U = Undetermined.
N = No further remedial action planned (NFRAP).

NFRAP is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not warranted and further assessment by EPA is not appropriate at the time. NFRAP status does not represent an EPA determination that no environmental threats are present at the facility or that no further environmental response action of any kind is necessary. NFRAP status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL and that, therefore, EPA anticipates no further involvement by EPA in site assessment or cleanup at the facility. However, additional CERCLA response actions by the Federal agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility that has a NFRAP status. The status information contained in the docket database is the result of EPA Regional evaluation of information taken directly from the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS). (CERCLIS is a database used by EPA Headquarters and Regional personnel to manage sites, programs, and projects. It contains the official inventory of all CERCLA (NPL and non-NPL) sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal, post construction completion and enforcement programs.) The status information was extracted from CERCLIS and was reviewed by the EPA Regional docket coordinators for review. The results of those reviews are incorporated into the status field in the docket database. Subsequently, an updated list of facilities having NFRAP status (those for which an ''N'' appears in the status field) was generated; the list of updates since the previous publication of the docket is being published today.

Important limitations apply to the list of facilities that have NFRAP status. First, the information is accurate only as of February 4, 2005. Second, a facility's status may change at any time because of any number of factors, including, but not limited to new site information. Finally, the list of facilities that have NFRAP status is based on EPA Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the Federal agency responsible for the facility or EPA.

The status information in the docket database will be reviewed and a new list of facilities classified as NFRAP will be published at each docket update.

6.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Therefore, all facilities on the additions list to this twenty first docket update must submit a PA and, if warranted, an SI to EPA. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental

targets, potential waste sources, and migration pathways. EPA will determine whether a SI is required based on information in the PA or other information coming to EPA's attention. An SI augments the data collected in a PA and requires sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office. Guidance on conducting PAs and SIs can be obtained from the *Guidance for Performing Preliminary Assessments Under CERCLA, 1991* and *Guidance for Performing Site Inspections Under CERCLA, 1992.* Additional information on site assessment at Federal facilities can be found in the *Federal Facilities Remedial Preliminary Assessment Summary Guide, 2005* and the *Federal Facilities Remedial Site Investigation Summary Guide, 2005.*

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the complete list of facilities classified as NFRAP are not being published today. However, the lists are available to interested parties and can be obtained at *http://www.epa.gov/fedfac* by clicking on the link for *Update #21 to the Federal Agency Hazardous Waste Compliance Docket* or by calling the EPA HQ Docket Coordinator at (703) 603–0265. As of today, the total number of Federal facilities that appear on the docket is 2,282.

Dated: October 18, 2005.

James E. Woolford,

Director, Federal Facilities Restoration and Reuse Office, Office of Solid Waste and Emergency Response.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Deletion of Facilities

(1) Small-Quantity Generator.
(2) Not Federally Owned.
(3) Formerly Federally Owned.
(4) No Hazardous Waste Generated.
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility.
(7) Combining Sites Into One Facility/ Entries Combined.
(8) Does Not Fit Facility Definition.
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism.
(16) One Entry Being Split Into Two/ Federal Agency Responsibility Being Split.
(17) New Information Obtained Showing That Facility Should Be Included.
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.
(19) Sites Were Combined Into One Facility.
(19A) New Facility.

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change.
(20A) Typo Correction/Name Change/ Address Change.
(21) Changing Responsible Federal Agency. (New Responsible Federal Agency Must Submit proof of previously performed PA, which is subject to approval by EPA.)
(22) Changing Responsible Federal Agency and Facility Name. (New Responsible Must Submit proof of previously performed PA, which is subject to approval by EPA.)
(23) New Reporting Mechanism Added at Update.
(24) Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

Note: Further information on definitions of categories can be obtained by calling Joshua Barber, the HQ Docket Coordinator at (703) 603–0265.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #21—ADDITIONS

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
FS-Tongass NF: APC Saginaw Bay Log Transfer.	Mile 0 FSR 6448	Kuiu Island	AK	99830	Agriculture	3010	19A
FS-Tongass NF: Sealevel Mine.	R94E T75S S18	Ketchikan	AK	99919	Agriculture	103c	19A
BLM-Josephine Mill #2 Site	1 Mi NW of Pend Oreille Village, T39N R43E Sec 16.	Metaline Falls	WA	99153	Interior	103c	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #21—CORRECTIONS

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
c—FAA-Iliamna Facility	Airport Nav Aids	Iliamna	AK	99606	Transportation.	103c 3010 3016.	20A, 23
o—FAA-Iliamna Site	Iliamna	Iliamna	AK	99606	Transportation.	103c 3016	
c—FWS-Grays Lake National Wildlife Refuge: Grays.	74 Grays Lake Rd 30 Mi N of Soda Springs.	Wayan	ID	83285	Interior	3010 103c	20A, 23

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #21—CORRECTIONS—Continued

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
o—FWS-Grays Lake National Wildlife Refuge.	74 Grays Lake Rd 30 Mi N of Soda Springs.	Wayan	ID	83285	Interior	3010	
c—FWS-Detroit River International Wildlife.	w/in Detroit River, 10 Miles Downstream Detroit, E of 6975 Mower Road.	Wyandotte	MI	48192	Interior	3016 103c	20A, 23
o—FWS-Detroit River International Wildlife.		Saginaw	MI	48601–9783.	Interior	3016	
c—USDA-FGIS Technical Center.	10383 N Ambassador Dr	Kansas City	MO	64153	Agriculture	3016 103c	23
o—USDA FGIS Technical Center.	10383 N Ambassador Dr	Kansas City	MO	64153	Agriculture	3016	
c—NPS-Statue of Liberty Natl Monument: Ellis Island.	Liberty Island	New York	NY	10004	Interior	3010 103c	20A, 23
o—NPS-Statue of Liberty Natl Liberty Monument: Ellis Island.	National Monument Island	Liberty Island	NY	10004	Interior	3010	
c—DLA/DNSC Scotia Depot	Route 5	Scotia	NY	12302–1039.	General Services Administration.	103c 3016	23
o—DLA/DNSC Scotia Depot	Route 5	Scotia	NY	12302–1039.	General Services Administration.	3016	
c—Bessey Nursery—USDA/Forest Service.	Spur 86B	Halsey	NE	69142	Agriculture	3016 103c	20A, 23
o—Bessey Nursery	Spur 86B	Halsey	NE	69142	Agriculture	3016	
c—Houston Medical Center	2002 Holcombe Boulevard	Houston	TX	77030	Veterans Affairs.	103a 103c 3010.	23
o—Houston Medical Center	2002 Holcombe Boulevard	Houston	TX	77030	Veterans Affairs.	103a 3010	
c—Saginaw (CSMS #1)	855 E. Industrial	Saginaw	TX	76131	Army	3016 103c	23
o—Saginaw (CSMS #1)	855 E. Industrial	Saginaw	TX	76131	Army	3016	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #21—DELETIONS

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
FAA-Kirksville (EX) AFS P–64	Rt. 2, Box 144A Hwy 23 South.	Booneville	AR		Agriculture	3016	1
FWS-D'Arbonne National Wildlife Refuge.	11372 Hwy 143	Farmerville	LA	71241–0401.	Interior	3016	1
FWS-Upper Ouachita National Wildlife Refuge.	11372 Hwy 143	Farmerville	LA	71241–0401.	Interior	3016	1
Hammond Combat Communication Air National.	901 N Airport Rd	Hammond	LA	70401	Air Force	3010	1
C. Ezell Property	Route 1 Box 69	Sandheimer	LA	71276		3016	2
Shreveport Medical Center	510 East Stoner Ave	Shreveport	LA	71130	Veterans Affairs.	103a	1
Santa Fe NF: Pecos Campground.	1220 St. Francis Drive	Santa Fe	NM	87504	Agriculture	103c 3016	4
BIA Branch of Roads CHEU	371 Hwy Blk 6 Shop 7 Mi S	Farmington	NN	87499	Interior	3010	2
Bul-Man Construction Company.	5214 Burleson Rd #308	Austin	TX	78744		3010	2
Houston Army Maintenance Support Activity #4.	6903 Perimeter Park	Houston	TX	77041	Army	3010	1
NALF Orange Grove	Dirt Rd 3m E H–281	Orange Grove	TX	78363	Navy	3010	1
BLM-East Summit Mining Claims.	T31WR20WSEC11,14		UT		Interior	103c 3016	4

[FR Doc. 05–21267 Filed 10–24–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 9, 2005.

Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

Robert Cundiff Phillips, Clifton, Texas; to acquire additional voting shares of Bosque Bancshares, Inc., Cranfills Gap, Texas, and thereby indirectly acquire Bosque Delaware Financial Corporation, Dover, Delaware, and First Security State Bank, Cranfills Gap, Texas.

Board of Governors of the Federal Reserve System, October 20, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5876 Filed 10–24–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BankGreenville Financial Corporation, Greenville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of BankGreenville, Greenville, South Carolina (in organization).

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First National Financial Corporation, McGehee, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of McGehee, McGehee, Arkansas.

Board of Governors of the Federal Reserve System, October 20, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5875 Filed 10–24–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to acquire through its wholly–owned subsidiary, Metavante Corporation, 100 percent of the issued and outstanding capital stock of Link2Gov Corp., Nashville, Tennessee, and thereby engage in data processing activities pursuant to § 225.28(b)(14)(i) of Regulation Y.

2. Palos Bancshares, Inc., Palos Heights, Illinois; to continue to engage in extending credit and servicing loans pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5877 Filed 10–24–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Public Affairs; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human

Services (HHS) is being amended at Chapter AP, ''Office of the Assistant Secretary for Public Affairs (OASPA),'' as last amended at 58 FR 52969–02, dated October 13, 1993. The proposed change is to make the following changes in the Office of the Assistant Secretary Public Affairs (Media): revise the functional statement for the News Division (APBI); and establish a new Web Communications Division (APB4). The changes are described below:

I. Under Part A, Chapter AP, Section AP.10 Organization, delete in its entirety and replace with the following:

AP.10 Organization. The Office of the Assistant Secretary for Public Affairs, headed by the Assistant Secretary for Public Affairs (ASPA) who reports to the Secretary, consists of the following organization:

- The Office of the Assistant Secretary for Public Affairs
- The Office of the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
  —Communications Services Division
  —Special Outreach Division
- The Office of the Deputy Assistant Secretary for Public Affairs (Medid)
  —News Division
  —Speech and Editorial Division
  —FOIA/Privacy Act Division
  —Web Communiations Division

II. Under Section AP.20 Functions, paragraph C.1, ''News Division,'' delete in its entirety, and replace with the following:

C.1 News Division (APB1)—Plans, directs and coordinates the issuance of public information from HHS to the press and broadcast media.

Prepares news releases and other news material for the Secretary and other top Department officials. Reviews and clears all news releases and other news materials prepared by HHS components.

Identifies news opportunities for the Secretary.

Makes recommendations concerning press releases on upcoming publication of regulations or other actions.

Identifies likely media questions for news conferences and interviews, assists in preparing background briefings for encounters with the press.

Briefs the Secretary, Deputy Secretary, and Chief of Staff, in conjunction with other departmental experts for all media events.

Responds to press queries, either directly or by steering reporters to appropriate public affairs personnel in Operating Division press offices. Reviews for approval all media interview requests received by HHS components.

Coordinates press conferences for the Secretary. Acts as a liaison for reporters requesting interviews and for newspaper editorial boards wishing to meet with the Secretary.

Monitors major national media, and selected local media when appropriate, and distributes articles of interest throughout the day to key staff.

Leads the planning, development and implementation of emergency incident communications strategies and activities for the Department.

III. Under section AP.20 Functions, at the end paragraph C.3, add the following new paragraph:

C.4 Web Communications Division (APB4): Leads the review of HHS Web information content, presentation, uses and technologies, and recommends and/or implements web-based information policy, guidance and tools for the Department, as appropriate.

Leads the review of the content of all proposed Department-wide and OS-level sites to ensure they are consistent with Departmental policies and goals.

Leads the development of Department Internet policy and public affairs issues as well as a development of a Department-wide policy on the creation and clearance of Web sites.

Manages daily operations of the main HHS public Web site. Manages additional Office of the Secretary-level Web sites, as appropriate.

Manages daily operations of the HHS intranet, and tools in support of HHS Web and intranet sites.

Dated: October 5, 2005.

Joe W. Ellis,

Assistant Secretary for Administration and Management.

[FR Doc. 05–21249 Filed 10–24–05; 8:45am]

BILLING CODE 4150–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–214]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 19th set of toxicological profiles, which consists of one new draft and seven updated drafts, prepared by ATSDR for review and comment.

DATES: In order to be considered, comments on these draft toxicological profiles must be received on or before February 27, 2006. Comments received after the close of the public comment period will be considered at the discretion of ATSDR on the basis of what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for printed copies of the draft toxicological profiles should be sent to the attention of Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic access to these documents is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html*.

Comments regarding the draft toxicological profiles should be sent to the attention of Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for printed copies of the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–214. Send one copy of all comments and three copies of all supporting documents to Ms. Roney at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton

Road, NE., Atlanta, Georgia 30333, telephone 1–(888)422–8737 or (770)488–3315.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on November 7, 2003 (68 FR 63098). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792) and October 25, 2001 (66 FR 54014). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.] Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2005.

Document	Hazardous substance	CAS No.
1	ACROLEIN (Update)	000107–02–8
2	ARSENIC (Update)	007440–38–2
3	BARIUM (Update)	007440–39–3
4	BENZENE (Update)	000071–43–2
5	HEPTACHLOR (Update)/	000076–44–8
	HEPTACHLOR EPOXIDE	001024–57–3
6	LEAD (Update)	007439–92–1
7	PERCHLORATES *	014797–73–0
8	XYLENES (Update)	001330–20–7

* Denotes new profile.

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 17, 2005.

Ken Rose,

Acting Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 05–21254 Filed 10–24–05; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting: Correction.

Name: Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP).

Summary: The Department of Health and Human Services, CDC published a document in the **Federal Register** of September 20, 2005, concerning the ACCLPP.

Correction: In the **Federal Register** of September 20, 2005, (Volume 70, Number 1811) [Notices] Page 55132 ''Place: The Hubert Humphrey Federal Building, 200 Independence Avenue, Washington, DC 20021'' Should read: 330 Independence Avenue, Room 5051, Snow Room Cohen Building, Washington, DC 20201. Telephone: 202–619–0814.

Contact Person For More Information: Claudine Johnson, Lead Poisoning Prevention Branch, Division of Emergency and Environmental Health Services, NCEH, CDC, 4770 Buford Hwy, NE., M/S F–40, Atlanta, Georgia 30341. Telephone: (770) 488–3300, fax: (770) 488–3635.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 19, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–21259 Filed 10–24–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0414]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Food and Drug Administration Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the use of rapid response surveys to obtain data on safety information to support quick-turnaround decisionmaking about potential safety problems or risk management solutions from health care professionals, hospitals and other user-facilities (e.g., nursing homes, etc.); consumers; manufacturers of biologics, drugs, and medical devices; distributors; and importers when FDA must quickly determine whether or not a problem with a biologic, drug, or medical device impacts the public health.

DATES: Submit written or electronic comments on the collection of information by December 27, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these comments: (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.

Generic FDA Rapid Response Surveys—(OMB Control Number 0910–0500)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. Under section 519 of the act (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device-related deaths, serious injuries, and malfunctions to FDA; to require user facilities to report device-related deaths directly to FDA and to manufacturers; and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process. FDA's regulations governing application for agency approval to market a new drug (21 CFR part 314) and regulations governing biological products (21 CFR part 600) implement these statutory provisions. Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch reporting systems using FDA Forms 3500 and 3500A (OMB control number 0910–0291) and the vaccine adverse event reporting system. FDA is seeking OMB clearance to collect vital information via a series of rapid response surveys. Participation in these surveys will be voluntary. This request covers rapid response surveys for community based health care professionals, general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), other health care professionals, patients, consumers, and risk managers working in medical facilities. FDA will use the information gathered from these surveys to obtain quickly vital information about medical product risks and interventions to reduce risks so the agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	30 (maximum)	6,000	0.5	3,000

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

FDA projects 30 emergency risk related surveys per year with a sample of between 50 and 200 respondents per survey. FDA also projects a response time of 0.5 hours per response. These estimates are based on the maximum sample size per questionnaire that FDA can analyze in a timely manner. The annual frequency of response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while other respondents may be contacted several times annually, depending on the human drug, biologic, or medical device under evaluation. It is estimated that, given the expected type of issues that will be addressed by the surveys, it will take 0.5 hours for a respondent to gather the requested information and fill in the answers.

Dated: October 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21240 Filed 10–24–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 14, 2005, from 8:30 a.m. to 5:30 p.m. and on November 15, 2005, from 8:30 a.m. to 1:30 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Mimi Phan, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *phanm@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 14, 2005, the subcommittee will: (1) Receive an update on previous Clinical Pharmacology Subcommittee meeting recommendations and an introduction to the topics of this meeting, (2) discuss and provide comments on the evidence and process for translation of pharmacogenetic information (e.g., Cytochrome P 2C9 polymorphisms) into label updates for approved products, (3) discuss current evidence related to the pharmacogenetics of warfarin as a potential basis for label updates, and (4) discuss and provide comments on the critical path pilot project, the End-of-Phase 2A meetings which will include a case study. On November 15, 2005, the subcommittee will discuss and and provide comments on: (1) An update on the critical path biomarker-surrogate endpoint project, (2) the use of biomarker information in labels to facilitate individualizing pharmacotherapy, and (3) the analytical and clinical validation criteria for approving a clinical assay (''diagnostic test''). The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the heading ''Advisory Committee for Pharmaceutical Science.'' (Click on the year 2005 and scroll down to the Advisory Committee for Pharmaceutical Science meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by November 4, 2005. Oral presentations from the public will be scheduled between approximately 11:15 a.m. and 11:30 a.m. and 3:35 p.m. and 3:50 p.m. on November 14, 2005, and between approximately 11:20 a.m. and 11:50 a.m. on November 15, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 4, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mimi Phan at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 18, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–21241 Filed 10–24–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Infant Mortality (ACIM).

Dates and Times: November 29, 2005, 9 a.m.–5 p.m., November 30, 2005, 8:30 a.m.–3 p.m.

Place: Washington, DC area hotel yet to be determined.

Status: The meeting is open to the public with attendance limited to space availability.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs that are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; strategies to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start program and *Healthy People 2010* infant mortality objectives.

Agenda: Topics that will be discussed include the following: Health Disparities in the Maternal and Child Health (MCH) Population and A Life-course Perspective for Perinatal Health and Preconception Care. Substantial time will be spent in Subcommittee and full Committee discussions aimed at formulating the ACIM issues agenda. Proposed agenda items are subject to change as priorities indicate.

Time will be provided for public comments limited to five minutes each; comments are to be submitted no later than November 14, 2005.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–2170.

Individuals who are submitting public comments or who have questions regarding the meeting and location should contact Ann M. Koontz, C.N.M., Dr.P.H., HRSA, Maternal and Child Health Bureau, telephone: (301) 443–6327, e-mail: *ann.koontz@hrsa.hhs.gov.*

Dated: October 18, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–21245 Filed 10–24–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: November 2, 2005, 8:30 a.m.–5 p.m., November 3, 2005, 8:30 a.m.–5 p.m., November 4, 2005, 8:30 a.m.–3 p.m.

Place: DoubleTree Hotel and Executive Center, 1750 Rockville Pike, Rockville, Maryland 20852.

Status: The meeting will be open to the public.

Agenda: Agency and Bureau administrative updates will be provided. The purpose of the meeting will be to address issues related to the status of the nursing workforce. Two leading educators/researchers will present on their findings related to nursing workforce data, trends and issues. In addition, representatives from four nursing organizations representing nursing education, practice and licensing will present their data, trends, and workforce issues. During this meeting and the subsequent April 2006 meeting, Council workgroups will deliberate on content presented and formulate recommendations to the Secretary of Health and Human Services and the Congress on nursing workforce issues based on the latest data and trends. This meeting will form the basis for NACNEP's mandated Sixth Annual Report.

For Further Information Contact: Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Donna English, M.P.H., R.N., Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5688.

Dated: October 19, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–21243 Filed 10–24–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; amendment.

SUMMARY: The Health Resources and Services Administration published a notice in the **Federal Register** of September 29, 2005 (70 FR 56926–56927) announcing an Advisory Committee on Organ Transplantation meeting on November 3–4 2005. The notice is being amended to change type of meeting, place, dates, and time.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Whipple at 301–443–2764 or e-mail: *swhipple@hrsa.gov.*

Correction

In the **Federal Register** of September 29, 2005, in FR Doc. 05–19431, on page 56927, 1ST column, under the heading Summary, 8th line, change to read:

The meeting will be an Audio Conference Call on November 1, 2005, from 12 noon to 4 p.m. EST. To access the conference call, call the USA Toll Free Number 888–791–2132 and enter the Passcode ''ACOT.'' The conference call leader is Dr. James Burdick.

Dated: October 18, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–21244 Filed 10–24–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21722]

Collection of Information Under Review by Office of Management and Budget (OMB): 1625–0089

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Request (ICR)—(1) 1625–0089, The National Recreational Boating Survey—abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before November 25, 2005.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2005–21722] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St. NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a)

above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 267–2326 or fax (202) 267–4814, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collection of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the Information Collection Requests (ICRs) addressed. Comments to DMS must contain the docket number of this request, [USCG 2005–21722]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the November 25, 2005.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–21722], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (70 FR 39777, July 11, 2005) required by 44 U.S.C. 3506(c)(2). That notice elicited one comment. The comment did not support conducting a national recreational boating survey in these times of Federal deficits. The comment further stated the Coast Guard should allocate resources toward patrolling our seas as well as keeping out illegal aliens.

The U.S. Coast Guard is the designated coordinator of the National Recreational Boating Safety (RBS) Program. The mission of the RBS Program is to minimize the loss of life, personal injury, property damage, and environmental impact associated with the use of recreational boats. We estimate that over 70 million adults age 16 and over participate in recreational boating activities annually on our nation's waterways. Thus, a national survey serves as a prudent allocation of resources that enables the Coast Guard to better understand the boating population which it serves, as well as identify safety priorities so programs can be developed and implemented that lower the number of boating deaths and injuries.

Information Collection Request

Title: The National Recreational Boating Survey.

OMB Control Number: 1625–0089.

Type of Request: Extension of a currently approved collection.

Affected Public: Recreational boaters.

Forms: None.

Abstract: The mission of the U.S. Coast Guard's National Recreational Boating Safety (RBS) Program is to minimize the loss of life, personal injury, property damage, and environmental impact associated with the use of recreational boats. The National Recreational Boating Survey information collection enables the Coast Guard to better identify safety priorities, coordinate and focus research efforts, and encourage consistency in the information that is collected, as well as methods of analysis that are employed. Working with our State partners, collecting this type of information from boaters across the nation is essential in our efforts to implement effective accident prevention strategies.

Burden Estimate: The estimated burden remains the same, 11,458 hours a year.

Dated: October 11, 2005.

R.T. Hewitt,

Rear Admiral, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–21235 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22704]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss Task Statement #52, ''Recommendations on the Coast Guard's Draft Proposals on Issues That Will Be Affected by the Revisions to the 1997 Interim Rule Implementing the 1978 STCW Convention, as amended.'' MERPAC advises the Secretary of Homeland Security on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. This meeting will be open to the public.

DATES: The MERPAC working group will meet on Thursday, November 17, 2005, from 8:30 a.m. to 4:30 p.m. (local), and Friday, November 18, 2005 from 8:30 a.m. to 4:30 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before November 3, 2005. Written material and requests to have a copy of your material distributed to each member of the working group should reach the Coast Guard on or before November 3, 2005.

ADDRESSES: The working group of MERPAC will meet in the Crabtree Room, which is situated on the second floor of the library at the United States Merchant Marine Academy. The Academy is located at the end of Steamboat Road in Kings Point, New York 11024. Send written material and requests to make oral presentations to Mr. Mark Gould, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under Docket Number USCG–2005–22704.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of November 17–18, 2005 Meetings

The working group will meet to discuss Task Statement #52, ''Recommendations on the Coast Guard's Draft Proposals on Issues That Will Be Affected by the Revisions to the 1997 Interim Rule Implementing the 1978 STCW Convention.'' The U.S. Coast Guard intends to finalize the provisions of the 1997 Interim Rule Implementing the 1978 STCW Convention, as amended. The working group will consider issues relating to deck and engine license progression/structures, tonnage equivalents, credit for military service, and management level training. Recommendations will be prepared for the full MERPAC committee to consider at its next meeting.

Procedural

This meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Gould no later than November 3, 2005. Written material for distribution at the meeting should reach the Coast Guard no later than November 3, 2005. If you would like a copy of your material distributed to each member of the committee or working group in advance of the meeting, please submit 25 copies to Mr. Gould no later than November 3, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Gould at the numbers listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: October 13, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–21142 Filed 10–21–05; 10:32 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975-N–35]

Notice of Proposed Information Collection: Comment Request; Master Appraisal Reports

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* December 27, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Master Appraisal Reports.

OMB Control Number, if applicable: 2502–0493.

Description of the need for the information and proposed use: HUD/FHA collection of this information permits the listing of models that cover the types of individual homes proposed for construction. The collection also sets forth the general and specific conditions, which must be satisfied before HUD/FHA can endorse a firm commitment for home mortgage insurance. Participating lenders working with developers prepare this information collection.

Agency form numbers, if applicable: HUD–91322, HUD–91322.1, HUD–91322.2, and HUD–91322.3.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 3,500 generating 14,000 annual responses, frequency of responses is on occasion, the estimated time per response varies from 30 minutes to 45 minutes, and the estimated annual burden hours requested is 7,875.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 12, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. E5–5867 Filed 10–24–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4922-N–11]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a Computer Matching Program between HUD and the Department of Veterans Affairs (VA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818; June 19, 1989); and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' HUD is issuing a public notice of its intent to conduct a recurring computer matching program with the VA to utilize a computer information system of HUD, the Credit Alert Interactive Verification and Reporting System (CAIVRS), with VA's debtor files. This match will allow prescreening of applicants for loans issued by or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government for HUD or VA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal agencies. The CAIVRS database contains delinquent debt information from the Departments of Agriculture, Education, Veteran Affairs, the Small Business Administration, and judgment lien data from the Department of Justice.

Authorized users do a prescreening of CAIVRS to determine a loan applicant's credit status with the Federal government. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision on any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin on November 25, 2005 unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: November 25, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P8001, Washington, DC 20410, telephone number (202) 708–2374. [This is not a toll-free number.] A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service). [This is a toll-free number].

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Don Toivola, Chief, Computer Specialist, Debt Management Center, Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Room 156, Ft. Snelling, MN 55111–4050, telephone number (612) 970–5705. [This is not a toll-free number.]

REPORTING:

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' copies of this notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB.

Authority: HUD has authority to collect and review mortgage data pursuant to the National Housing Act, as amended, 12 U.S.C. 1701 et seq., and related laws. The VA is authorized, pursuant to 38 U.S.C. 3710, to determine that any veteran who obtains a VA-guaranteed home loan poses a satisfactory credit risk. This computer matching will be conducted pursuant to Public Law 100–503, ''The Computer Matching and Privacy Protection Act of 1988,'' as amended, and OMB Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); and the Deficit Reduction Act of 1984, as amended.

OBJECTIVES TO BE MET BY THE MATCHING PROGRAM:

The matching program will allow VA access to a system that permits prescreening of applicants for loans issued or loans guaranteed by the Federal government to ascertain if the

applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to VA's debtor data for prescreening purposes.

RECORDS TO BE MATCHED:

HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on insured or guaranteed home mortgage loans under Title II of the National Housing Act; or individuals who have defaulted on rehabilitation loans under Section 312 of the Housing Act of 1964; or individuals who have had a claim paid in the last three years on a loan under Title I of the National Housing Act. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The VA will provide HUD with debtor files contained in its system of records entitled SS–VA26, Loan Guaranty Systems of Records. Central Accounts Receivable On Line System is a subsidiary of SS–VA26. HUD is maintaining VA's records only as a ministerial action on behalf of VA, not as a part of HUD's HUD/DEPT–2 system of records. VA's data contain information on individuals who have defaulted on their guaranteed loans. The VA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for VA's data.

NOTICE PROCEDURES:

HUD and the VA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the VA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal government.

CATEGORIES OF RECORDS/INDIVIDUALS INVOLVED:

The debtor records include these data elements from HUD's systems of records, HUD/Dept–2: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

PERIOD OF THE MATCH:

Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: October 13, 2005.

Lisa Schlosser,

Chief Information Officer.

[FR Doc. E5–5866 Filed 10–24–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

A proposal extending information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the proposal by fax (202) 395–6566 or e-mail (*oira_docket @omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department. Send copies of your comments to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, or e-mail (*jcordyac@usgs.gov*).

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Frogwatch USA.

OMB Approval No.: 1028–0072.

Summary: The collection of information referred herein applies to a World-Wide Web site that permits individuals to count frogs and toads. The Web site is termed Frogwatch USA. Information will be used by scientists and Federal, State, and local agencies to identify wetlands showing significant declines in populations of amphibians.

Estimated Annual Number of Respondents: 2,000.

Estimated Annual Burden Hours: 3,000 hours.

Affected Public: Primarily U.S. residents.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or go to the Web site (*http://frogweb.nbii.gov/narcam/*).

Dated: October 17, 2005.

Susan D. Haseltine,

Associate Director for Biology.

[FR Doc. 05–21219 Filed 10–24–05; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0087).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The title of this information collection request (ICR) is ''30 CFR Part 227—Delegation to States; 30 CFR Part 228—Cooperative Activities with States and Indian Tribes; and 30 CFR Part 229—Delegation to States.'' We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR parts 227, 228, and 229 and to reflect OMB approval of consolidation of two ICRs, titled:

- 1010–0087: 30 CFR Part 228—Cooperative Activities with States and Indian Tribes; and
- 1010–0088: 30 CFR Part 227—Delegation to States.

In the two ICRs, much of the general information was repeated and cross referenced. This consolidated ICR 1010–0087 eliminates that duplication of effort and redundancy of data and, also, includes 30 CFR part 229 information collection burden hours, which were not included in the previous information collections (1010–0087 and 1010–0088).

DATES: Submit written comments on or before December 27, 2005.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *Sharron.Gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR Part 227—Delegation to States; 30 CFR Part 228—Cooperative Activities with States and Indian Tribes; and 30 CFR Part 229—Delegation to States.

OMB Control Number: 1010–0087.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor, relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are accurately valued and appropriately paid.

Sections 202 and 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, authorized the Secretary to develop delegated and cooperative agreements with states and Indian tribes to carry out certain inspection, auditing, investigation, or limited enforcement activities for leases in their jurisdiction. The states and Indian tribes are working partners and are an integral part of the overall onshore and offshore compliance effort.

Applicable Citations

Applicable citations of the laws pertaining to this ICR include:

(1) Public Law 97–451—Jan. 12, 1983, FOGRMA, Sections 202 and 205; and

(2) Public Law 104–185, as corrected by Public Law 104–200, the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA).

Relevant parts of the Code of Federal Regulations (CFR) include 30 CFR parts 227, 228, and 229, as described below:

Title 30 CFR part 227, Delegation to States, provides procedures to delegate certain Federal royalty management functions to states for Federal oil and gas, geothermal, and solid mineral leases and leases subject to 8(g) of the Outer Continental Shelf Lands Act, within their state boundaries.

Title 30 CFR part 228, Cooperative Activities with States and Tribes, provides procedures to utilize the capabilities of the Indian tribes to carry out audits and related investigations of their respective leased lands.

Title 30 CFR part 229, Delegation to States, provides procedures to utilize the capabilities of the states to carry out audits and related investigations of leased Indian lands within their respective state boundaries, by permission of the respective Indian tribal councils or individual Indian mineral owners.

Effective September 11, 1997, parts 228 and 229 do not apply to Federal lands, due to implementation of RSFA amendments.

Delegation to States, 30 CFR Part 227

The states audit Federal lands under provisions of 30 CFR part 227. The Secretary is authorized under Section 205 of FOGRMA, as amended by RSFA, to delegate to states, all or part of authorities and responsibilities of the Secretary, to conduct inspections, audits, investigations, and limited enforcement activities for leases in their jurisdiction.

The RSFA amended FOGRMA Section 205 to include all of the following royalty management functions on Federal lands:

a. Conducting audits and investigations;

b. Receiving and processing production and royalty reports;

c. Correcting erroneous report data;

d. Performing automated verification;

e. Issuing demands and subpoenas (except for solid mineral and geothermal leases);

f. Issuing orders to perform restructured accounting; and

g. Issuing related tolling agreements and notices to lessees or their designees.

The states perform nearly all audits on Federal leases within their boundaries and typically receive 50 percent of any additional collections; however, Alaska typically receives 90 percent of onshore royalties. Many states gain efficiencies by performing audits on state severance taxes and concurrently on properties that have both Federal and state interests. Federal royalties are a significant portion of many states' annual budgets.

To be considered for delegation under 30 CFR part 227, states must submit a written delegation proposal to, and receive approval from, the MMS Associate Director for Minerals Revenue Management (MRM). Delegation agreements benefit both MMS and states by helping to ensure correct and timely production reporting, proper product valuation, and accurate and timely royalty payment through the application of an aggressive and comprehensive audit program.

Eleven states currently have MMS-approved delegation agreements to perform audits and investigations, which are the functions previously authorized under FOGRMA. The most recent delegated agreement was established in 2004 between MMS and the state of Alaska. Since the final rulemaking of Delegation of Royalty Management Functions to States on August 12, 1997 (62 FR 43076), effective September 11, 1997, one state has proposed a delegation agreement to assume the automated verification functions authorized by RSFA.

When a state performs any of the delegated functions under 30 CFR part 227, the state also assumes the burden of providing various types of information to MMS. Under RSFA, and to properly administer the delegation of the functions to the requesting states, MRM must collect pertinent information from industry and states to ensure that this program continues to operate efficiently and effectively.

Companies send all royalty reports and payments (ICR 1010–0140, expires October 31, 2006) and production reports (ICR 1010–0139, expires August 31, 2006) to MRM. The MRM verifies the accuracy of the reports and payments prior to disbursing the funds to states, Indian tribes, individual Indian mineral owners, the U.S. Treasury, and other Federal agencies. If states choose to participate in the delegable function of receiving and processing financial and production reports, payors/reporters must send these reports to each participating state for the Federal leases within that state and to MRM for the remaining Federal leases. The states must verify the accuracy of these reports.

The MRM currently handles production and royalty reporting, error correction, automated verification, issuing demand letters, and billing actions. Although one state has requested the automated verification functions, if another state does in the future, payors/reporters may have to work with and provide data to various contacts in the participating state(s) and in MRM. At this time, MRM has not approved the state for said functions.

In addition, MRM is held accountable to certain measurements and standards and must file reports to outside entities. States choosing to participate in any delegable function will be held to these same measurements and standards and, therefore, will have to provide data to document the work they are performing. This information, provided to MMS in the course of performing delegated agreements, is the focus of this information collection. States must comply with Generally Accepted Accounting Principles (GAAP) and MMS standards, as required under 30 CFR 227.200, and with the MMS Audit Procedures Manual and Generally Accepted Government Auditing Standards (GAGAS), as required under 30 CFR 227.301.

Cooperative Activities With State and Indian Tribes, 30 CFR Part 228

Effective September 11, 1997, part 228 does not apply to Federal lands.

The Secretary is authorized under FOGRMA Section 202, Cooperative Agreements, as amended by RSFA Section 8, to enter into cooperative agreements with any state or Indian tribe upon their written request; to share oil or gas royalty management information; and to use the capabilities of states and Indian tribes to carry out inspection, royalty audit, and related investigation.

At this time, no state has proposed to enter into a cooperative agreement or to undertake activities on Indian lands within the state.

Cooperative activities benefit both MMS and Indian tribes by helping to ensure accurate and timely production reporting, proper product valuation, and accurate and timely royalty payment through the application of an aggressive and comprehensive audit program.

Indian tribes currently manage audits for 88 percent of all tribal mineral royalties. Major focuses in FY 2007 provide for additional funding for a new tribal cooperative agreement with the Hopi Tribe and additional full-time MMS employees to provide increased oversight of Indian tribal audits due to a recent court decision.

To be considered for a cooperative audit agreement, Indian tribes must comply with the regulations at 30 CFR part 228. Indian tribes who want to do royalty audits in cooperation with MMS must submit a written proposal to enter into a cooperative agreement, signed by the tribal chairman or other appropriate official, to the MMS Director. The request should outline the activities to be undertaken and present evidence that the Indian tribe(s) can meet the standards established by the Secretary for the activities to be conducted. Prior to beginning work, approval must be obtained from the MMS Director.

Currently, there are no states with cooperative agreements. However, eight Indian tribes currently have cooperative agreements to perform audits and investigations. When an Indian tribe performs any of the cooperative activities under 30 CFR part 228, the Indian tribe also assumes the burden of providing various types of information to MMS. This information, provided to MMS in the course of performing cooperative agreements, is the focus of this information collection. After the request is accepted and a cooperative agreement is in effect, Indian tribes must submit an annual workplan and budget, as well as quarterly reimbursement vouchers. They must follow GAAP and MMS standards as required under 30 CFR 228.102. The cooperative agreements also require them to comply with the MMS Audit Procedures Manual and GAGAS.

Delegation to States, 30 CFR Part 229

Effective September 11, 1997, part 229 does not apply to Federal lands.

Under the Secretary's delegation of authority at this part, a state may conduct audits and related investigations of oil and gas payments made to MMS regarding leased Indian lands within the state's boundaries. A state must receive written permission from the respective Indian tribe(s) or individual Indian mineral owner(s).

After receiving written permission, the governor or other authorized official of a state may petition the Secretary to assume responsibilities of conducting audits and related investigation of Indian oil and gas leases. A state petitioning for a delegation of authority will have the opportunity to present testimony at a public hearing within the state.

After the state receives approval of the Secretary's delegation of authority, it must submit annual audit work plans detailing its audits and related investigations, annual budgets, and

quarterly reimbursement vouchers. The state shall maintain books and records and provide a quarterly summary of costs following Department standards, as required under 30 CFR 229.109.

Title 30 CFR 229.101(b), covering the Federal Government's administration of delegations, states:

(b) A State may enter into a delegation of authority under this part without affecting a State's ability to enter into a cooperative agreement under Part 228 of this chapter.

At this time no state has proposed to undertake delegated functions on Indian lands within its boundaries.

Summary

Proprietary information submitted to MMS under this collection is protected. No items of a sensitive nature are collected. The opportunity to engage in these programs is voluntary; however, if MMS approval for the cooperative agreement or delegation is obtained, the requirement to respond is mandatory.

Frequency of Response: Varies based on the function performed.

Estimated Number and Description of Respondents: 11 states and 8 Indian tribes.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 6,309 hours.

We are revising this ICR to include reporting requirements, part 229 citations, that were overlooked in the previous renewal, and we have adjusted the burden hours accordingly.

The MMS estimates 767 responses each year from the 11 states and 8 Indian tribes. We estimate the total annual burden is 6,309 (4,309 for states and 2,000 for Indian tribes) reporting and recordkeeping hours. Due to the complexity of the chart below, we are detailing the number of burden hours for the states and Indian tribes.

- States: We estimate 701 responses (685 from 30 CFR part 227 and 16 from 30 CFR part 229) from 11 states. We estimate the total annual burden for these responses is 4,309 reporting and recordkeeping hours (4,293 from 30 CFR part 227 and 16 from 30 CFR part 229) due to historical information.
- Indian tribes: We estimate 66 responses (from 30 CFR part 228) from 8 Indian tribes. We estimate the total annual burden for these responses is 2,000 reporting and recordkeeping hours due to historical information.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph.

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	Part 227—Delegation to States			
	Delegation Proposals			
227.103	What must a State's delegation proposal contain? If you want MMS to delegate royalty management functions to you, then you must submit a delegation proposal to the MMS Associate Director for Minerals Revenue Management. MMS will provide you with technical assistance and information to help you prepare your delegation proposal * * *	200	1	200
	Delegation Process			
227.107	When will the MMS Director decide whether to approve a State's delegation proposal?. The MMS Director will decide whether to approve your delegation proposal within 90 days after your delegation proposal is considered complete under § 227.104. MMS may extend the 90-day period with your written consent.	Hour burden covered under § 227.103.		
227.109	What if the MMS Director denies a State's delegation proposal?. If the MMS Director denies your delegation proposal, MMS will state the reasons for denial. MMS also will inform you in writing of the conditions you must meet to receive approval. You may submit a new delegation proposal at any time following a denial.	Hour burden covered under § 227.103.		
227.110(a)	When and for how long are delegation agreements effective? (a) Delegation agreements are effective for 3 years from the date the MMS Director signs the delegation agreement. However, during the development of the State's delegation proposal under § 227.108 of this part, MMS, the delegated State, and any other affected person will determine an appropriate transition period for lessees and their designees to modify their systems to comply with any new requirements under a delegation agreement * * *	Hour burden covered under § 227.103.		

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
227.110(b) and (b)(1)	(b) You may ask MMS to renew the delegation for an additional 3 years no less than 6 months before your 3-year delegation agreement expires. You must submit your renewal request to the MMS Associate Director for Minerals Revenue Management as follows: (1) If you do not want to change the terms of your delegation agreement for the renewal period, you need only ask to extend your existing agreement for the 3-year renewal period * * *	Hour burden covered under § 227.103.		
227.110(b)(2)	(b)(2) If you want to change the terms of your delegation agreement for the renewal period, you must submit a new delegation proposal under this part.	15	11	165
227.110(c)	(c) The MMS Director may approve your renewal request only if MMS determines that you are meeting the requirements of the applicable standards and regulations. If the MMS Director denies your renewal request, MMS will state the reasons for denial. MMS also will inform you in writing of the conditions you must meet to receive approval. You may submit a new renewal request any time after denial.	Hour burden covered under § 227.103.		
227.110(d)	(d) After the 3-year renewal period for your delegation agreement ends, if you wish to continue performing one or more delegated functions, you must request a new delegation agreement from MMS under this part. MMS will schedule a hearing on your request, if MMS determines a hearing is appropriate * * *.	Hour burden covered under § 227.103.		
227.110(e)	(e) If you do not request a hearing under paragraphs (b)(1) or (d) of this section, any other affected person may submit a written request for a hearing under those paragraphs to the MMS Associate Director for Minerals Revenue Management.	Hour burden covered under § 227.103.		
	Existing Delegations			
227.111(a) and (b)	Do existing delegation agreements remain in effect? ..... This section explains your options if you have a delegation agreement in effect on the effective date of this regulation. (a) * * * Before the agreement expires, if you wish to continue to perform one or more of the delegated functions you performed under the expired agreement, you must request a new delegation agreement meeting the requirements of this part and the applicable standards. (b) If you want to perform royalty management functions in addition to those authorized under your existing agreement, you must request a new delegation agreement.	Hour burden covered under § 227.103.		
	Compensation			
227.112(d)	What compensation will a State receive to perform delegated functions?. You will receive compensation for your costs to perform each delegated function subject to the following conditions * * * (d) At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year. However, you may agree to provide vouchers on a monthly basis in your delegation agreement;	4	84 (NOTE: 5 states × 12 montly responses = 60 and 6 states × 4 quarterly responses = 24)	336
227.112(e)	(e) You must maintain adequate books and records to support your vouchers * * *.	Hour burden covered under § 227.200(d).		

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	States' Responsibilities To Perform Delegated Functions			
227.200(a)(b), (c), and (d).	What are a State's general responsibilities if it accepts a delegation?. For each delegated function you perform, you must: (a) * * * seek information or guidance from MMS regarding new, complex, or unique issues.* * * (b)(1) * * * Provide complete disclose of financial results of activities;. (2) Maintain correct and accurate records of all mineral-related transactions and accounts;. (3) Maintain effective controls and accountability; ..... (4) Maintain a system of accounts * * * ..... (5) Maintain adequate royalty and production information * * *. (c) Assist MMS in meeting the requirements of the Government Performance and Results Act (GPRA) * * *. (d) Maintain all records you obtain or create under your delegated function, such as royalty reports, production reports, and other related information. * * * You must maintain such records for at least 7 years. * * *	200	11	2,200
227.200(e) and (h) ...	What are a State's general responsibilities if it accepts a delegation?. * * * (e) Provide reports to MMS about your activities under your delegated functions * * * At a minimum, you must provide periodic statistical reports to MMS summarizing the activities you carried out * * * (h) Help MMS respond to requests for information from other Federal agencies, Congress, and the public * * *	3	44	132
227.200(f)	What are a State's general responsibilities if it accepts a delegation?. * * * (f) Assist MMS in maintaining adequate reference, royalty, and production databases * * *.	1	250	250
227.200(g) and 227.301(e).	§ 227.200 What are a State's general responsibilities if it accepts a delegation? * * *. (g) Develop annual work plans * * * ..... § 227.301 What are a State's responsibilities if it performs audits?. If you perform audits you must * * * ..... (e) Prepare and submit MMS Audit Work Plans * * *	60	11	660
227.400(a)(4) and (a)(6).	What functions may a State perform in processing production reports or royalty reports?. Production reporters or royalty reporters provide production, sales, and royalty information on mineral production from leases that must be collected, analyzed, and corrected. (a) If you request delegation of either production report or royalty report processing functions, you must perform * * *. (4) Timely transmitting production report or royalty report data to MMS and other affected Federal agencies * * *. (6) Providing production data or royalty data to MMS and other affected Federal agencies * * *.	1	250	250
227.400(c)	What functions may a State perform in processing production reports or royalty reports?. (c) You must provide MMS with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.	1	12	12
227.401(d)	What are a State's responsibilities if it processes production reports or royalty reports?. In processing production reports or royalty reports you must * * *. (d) Timely transmit required production or royalty data to MMS and other affected Federal agencies * * *	Hour burden covered under § 227.400(a)(4) and (a)(6).		

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
227.401(e)	What are a State's responsibilities if it processes production reports or royalty reports?. In processing production reports or royalty reports you must * * *. (e) Access well, lease, agreement, and reporter reference data from MMS, and provide updated information to MMS * * *.	Hour burden covered under § 227.200(f).		
227.501(c)	What are a State's responsibilities to ensure that reporters correct erroneous data?. (c) Submit accepted and corrected lines to MMS to allow processing in a timely manner * * *.	Hour burden covered under § 227.400(a)(4) and (a)(6).		
227.601(c)	What are a State's responsibilities if it performs automated verification?. To perform automated verification of production reports or royalty reports, you must * * *. (c) Maintain all documentation and logging procedures * * *	8	11	88
227.601(d)	What are a State's responsibilities if it performs automated verification?. To perform automated verification of production reports or royalty reports, you must * * *. (d) Access well, lease, agreement, and production reporter or royalty reporter reference date from MMS and provide updated information to MMS * * *.	Hour burden covered under § 227.200(f).		
	Performance Review			
227.801(a)	What if a State does not adequately perform a delegated function?. If your performance of the delegated function does not comply with your delegation agreement * * *. (a) * * * You may ask MMS for an extension of time to comply with the notice. In your extension request you must explain why you need more time * * *.	Hour burden covered under § 227.200(e).		
227.804	How else may a State's delegation agreement terminate? ..... You may request MMS to terminate your delegation at any time by submitting your written notice of intent 6 months prior to the date on which you want to terminate. * * *	Hour burden covered under § 227.200(e).		
227.805	How may a State obtain a new delegation agreement after termination?. After your delegation agreement is terminated, you may apply again for delegation by beginning with the proposal process * * *	Hour burden covered under § 227.103		
	Subtotal Burden for 30 CFR part 227		685	4,293
	Part 228—Cooperative Activities With States and Indian Tribes			
	Subpart C—Oil and Gas, Onshore			
228.100(a) and (b)	Entering into an agreement ..... (a) * * * Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from * * * tribal chairman * * * to the Director of MMS. (b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information: (1) Type of eligible activities to be undertaken. (2) Proposed term of the agreement. (3) Evidence that * * * Indian tribe meets, or can meet by the time the agreement is in effect * * * (4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.	200	1	200
228.101(a)	Terms of agreement ..... (a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable * * * upon request of * * * Indian tribe * * *	15	8	120

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
228.101(c)	(c) * * * Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.	Hour burden covered under § 228.100(a).		
228.101(d)	Terms of Agreement (d) * * * Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies * * *.	80	1	80
228.103(a) and (b)	Maintenance of records (a) * * * Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials * * * (b) * * * Indian tribe shall maintain all books and records * * *.	120	8	960
228.105(a)(1) and (a)(2).	Funding of cooperative agreements (a)(1) The Department may, under the terms of the cooperative agreement, reimburse * * * Indian tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a work plan and funding requirement. (2) A cooperative agreement may be entered into with * * * Indian tribe, upon request, without a requirement for reimbursement of costs by the Department.	60	8	480
228.105(c)	Funding of cooperative agreements (c) * * * Indian tribe shall submit a voucher for reimbursement of eligible costs incurred within 30 days of the end of each calendar quarter * * * Indian tribe must provide the Department a summary of costs incurred, for which * * * Indian tribe is seeking reimbursement, with the voucher.	4	40 (NOTE: 1 tribe × 12 monthly responses = 12 and 7 tribes × 4 quarterly responses = 28)	160
228.107(b)	Eligible cost of activities (b) * * * Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.	Hour burden covered under § 228.100(a) and (b).		
	Subtotal Burden for 30 CFR part 228		66	2,000
	Part 229—Delegation to States			
	Subpart C—Oil and Gas, Onshore			
	Administration of Delegations			
229.100(a)(1) and (a)(2).	Authorities and responsibilities subject to delegation (a) All or part of the following authorities and responsibilities of the Secretary under the Act may be delegated to a State authority: (1) Conduct of audits related to oil and gas royalty payments made to the MMS which are attributable to leased * * * Indian lands within the State. Delegations with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee. (2) Conduct of investigation related to oil and gas royalty payments made to the MMS which are attributable to * * * Indian lands within the State. Delegation with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee. No investigation will be initiated without the specific approval of the MMS * * *.	1	1	1

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
229.101(a) and (d)	Petition for delegation (a) The governor or other authorized official of any State which contains * * * Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters effecting * * * Indian oil and gas leases within the State * * * (d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply or a delegation of authority.	1	1	1
229.102(c)	Fact-finding and hearings (c) A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.	1	1	1
229.103(c)	Duration of delegations; termination of delegations (c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.	1	1	1
229.105	Evidence of Indian agreement to delegation In the case of a State seeking a delegation of authority for Indian lands * * * the State petition to the Secretary must be supported by an appropriate resolution or resolutions or tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.	1	1	1
229.106	Withdrawal of Indian lands from delegated authority If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State * * *	1	1	1
229.109(a)	Reimbursement for costs incurred by a State under the delegation of authority.. (a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred * * *	1	1	1
229.109(b)	Reimbursement for costs incurred by a State under the delegation of authority. (b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.	1	1	1
229.120	Obtaining regulatory and policy guidance All activities performed by a State under a delegation must be in full accord with all Federal laws, rules and regulations, and Secretarial and agency determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties. In those cases when guidance or interpretations are necessary, the State will direct written requests for such guidance or interpretation to the appropriate MMS officials * * *	1	1	1

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
229.121(a), (b), (c), and (d).	Recordkeeping requirements (a) The State shall maintain in a safe and secure manner all records, workpapers, reports, and correspondence gained or developed as a consequence of audit or investigative activities conducted under the delegation * * * (b) The State must maintain in a confidential manner all data obtained from DOI sources or from payor or company sources under the delegation * * * (c) All records subject to the requirements of paragraph (a) must be maintained for a 6-year period measured from the end of the calendar year in which the records were created * * * Upon termination of a delegation, the State shall, within 90 days from the date of termination, assemble all records specified in subsection (a), complete all working paper files in accordance with § 229.124, and transfer such records to the MMS. (d) The State shall maintain complete cost records for the delegation in accordance with generally accepted accounting principles * * *	1	1	1
229.122(a), (b), and (c).	Coordination of audit activities (a) Each State with a delegation of authority shall submit annually to the MMS an audit workplan specifically identifying leases, resources, companies, and payors scheduled for audit * * * A State may request changes to its workplan * * * at the end of each quarter of each fiscal year. All requested changes are subject to approval by the MMS and must be submitted in writing. (b) When a State plans to audit leases of a lessee or royalty payor for which there is an MMS or OIG resident audit team, all audit activities must be coordinated through the MMS or OIG resident supervisor * * * (c) The State shall consult with the MMS and/or OIG regarding resolution of any coordination problems encountered during the conduct of delegation activities.	1	1	1
229.123(b)(3)(i)	Standards for audit activities (b) * * * (3) Standards of reporting. (i) Written audit reports are to be submitted to the appropriate MMS officials at the end of each field examination.	1	1	1
229.124	Documentation standards Every audit performed by a State under a delegation of authority must meet certain documentation standards. In particular, detailed workpapers must be developed and maintained.	1	1	1
229.125(a) and (b)	Preparation and issuance of enforcement documents (a) Determinations of additional royalties due resulting from audit activities conducted under a delegation of authority must be formally communicated by the State, to the companies or other payors by an issue letter prior to any enforcement action * * * (b) After evaluating the company or payor's response to the issue letter, the State shall draft a demand letter which will be submitted with supporting workpaper files to the MMS for appropriate enforcement action. Any substantive revisions to the demand letter will be discussed with the State prior to issuance of the letter * * *	1	1	1
229.126(a) and (b)	Appeals (a) * * * The State regulatory authority shall, upon the request of the MMS, provide competent and knowledgeable staff for testimony, as well as any required documentation and analyses, in support of the lessor's position during the appeal process. (b) An affected State, upon the request of the MMS, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals * * *	1	1	1

RESPONDENT'S ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
229.127	Reports from States The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation * * *	1	1	1
Subtotal Burden for 30 CFR part 229			16	16
TOTAL BURDEN			767	6,309

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified the "non-hour cost" burden at $20,000 as annual start-up costs.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: October 13, 2005.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 05–21283 Filed 10–24–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore; Two Hundred Fifty-Fifth Notice of Meeting; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The National Park Service published a document in the **Federal Register** of October 5, 2005 concerning the Two Hundred Fifty-Fifth Notice of Meeting of the Cape Cod National Seashore Advisory Commission. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: George E. Price, Jr., 508–349–3785 x 202.

Correction

In the **Federal Register** of October 5, 2005, in FR Doc. 05–19961, on page 58239, in the second paragraph, correct the paragraph to read:

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on December 12, 2005.

Dated: October 17, 2005.

George E. Price, Jr.,

Superintendent.

[FR Doc. 05–21224 Filed 10–24–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park; Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., November 18, 2005 at Kaloko-Honokohau National Historical Park headquarters, Kailua-Kona, Hawaii.

The agenda will be on discussions on the preliminary planning for the Live-In Cultural/Education Center.

The meeting is open to the public. Disabled persons requiring special assistance should contact the Superintendent at (808) 329–6881 ext 7, seven days prior to the meeting.

Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: October 5, 2005.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 05–21223 Filed 10–24–05; 8:45 am]

BILLING CODE 4312–6H–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, National Capital Memorial Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the National Capital Memorial Advisory Commission (the Commission) will be held on Tuesday, November 8, 2005, at 1:30 p.m., at the National Building Museum, Room 312, 401 F Street, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs. In addition to discussing general matters and conducting routine business, the Commission will review the status of legislative proposals introduced in the 108th Congress to establish memorials in the District of Columbia and its environs, as follows:

Action Items

(1) Site Selection Study, Memorial to President Dwight D. Eisenhower.

(2) Site Selection Study, Frederick Douglass Memorial Garden.

(3) Legislation currently under consideration by the 109th Congress.

Informational Items

(1) Congressional actions taken on bills previously reviewed by the Commission.

Other Business

(1) General matters and routine business.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission, at (202) 619–7097.

DATES: November 8, 2005, at 1:30 p.m.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, 202–619–7097.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service.
Administrator, General Services Administration.
Chairman, National Capital Planning Commission.
Chairman, Commission of Fine Arts.
Mayor of the District of Columbia.
Architect of the Capitol.
Chairman, American Battle Monuments Commission.
Secretary of Defense.

Dated: September 26, 2005.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 05–21222 Filed 10–24–05; 8:45am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of a National Park Subsistence Resource Commission (SRC) Meeting for Gates of the Arctic National Park

AGENCY: National Park Service, Interior.

SUMMARY: The National Park Service (NPS) announces an SRC meeting within the Alaska Region for Gates of the Arctic National Park. The purpose of the meeting is to develop and continue work on subsistence hunting program recommendations and other related subsistence management issues. This meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments to the SRC. The NPS SRC program is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. Meeting minutes will be available for public inspection approximately six weeks after the meeting.

DATES: The meeting will be held from 9 a.m. to 5 p.m. on Wednesday, November 9, 2005, and 9 a.m. to 5 p.m. on Thursday, November 10, 2005.

Location: The meeting will be held at the Sophie's Station Hotel in Fairbanks, Alaska, 99709, Tel (907) 479–3650.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent, and Fred Andersen, Subsistence Coordinator, Gates of the Arctic National Park and Preserve, 201 First Avenue, Fairbanks, AK 99701, telephone (907) 457–5752.

SUPPLEMENTARY INFORMATION: SRC meeting location and dates may need to be changed based on weather or local circumstances. Notice of SRC meetings will be published in local newspapers and announced on local radio stations prior to the meeting dates. The agendas for each meeting include the following:

1. Call to order (SRC Chair).

2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Approve Agenda.
5. Review and adopt minutes from last meeting.
6. Status of SRC Membership—Election of Chair and Vice Chair.
7. Commission Member Reports.
8. Superintendent and NPS Staff Reports.
9. Federal Subsistence Board Update.
10. New Business.
11. Agency and Public Comments.
12. SRC Work Session. Prepare correspondence and hunting program recommendations.
13. Set time and place of next SRC meeting.
14. Adjournment.

Marcia Blaszak,

Regional Director.

[FR Doc. 05–21220 Filed 10–24–05; 8:45 am]

BILLING CODE 4312–HK–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board—National Center for Preservation Technology and Training: Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix (1988)), that the Preservation Technology and Training Board (Board) of the National Center for Preservation Technology and Training, National Park Service will meet on Monday, October 31, 2005, in Santa Fe, New Mexico.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Park Service's National Center for Preservation Technology and Training (National Center) in compliance with section 404 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470x–2(e)).

The Board will meet in the De Vargas Room of the Hotel St. Francis at 210 Don Gaspar Avenue, Santa Fe, New Mexico 87501—telephone (505) 983–5700. The meeting will begin at 9 a.m. and end no later than 5 p.m.

The Board's meeting agenda will include: National Center response to hurricanes Katrina and Rita; review and comment on National Center operational priorities for FY 2006; status of FY 2006 National Center budget and initiatives; development and launch of the Lee H. Nelson Prize in Historic Preservation Technology; proposed Wingspread Conference on Sustainability in Preservation; and Board workgroup reports.

The Board meeting is open to the public. Facilities and space for accommodating members of the public are limited, however, and persons will be accommodated on a first come, first served basis. Any member of the public may file a written statement concerning any of the matters to be discussed by the Board.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may contact: Mr. John A. Burns, Acting Assistant Associate Director, Heritage Preservation Assistance Programs, National Park Service, U.S. Department of the Interior, 1849 C Street, NW., Room 2250 MIB, Washington, DC 20240—telephone (202) 354–2118. Increased security in the Washington, DC area may cause delays in the delivery of the U.S. Mail or commercial delivery to government office buildings. In addition to U.S. Mail or commercial delivery, written comments may be sent by fax to Mr. Burns at (202) 371–6473.

Minutes of the meeting will be available for public inspection no later than 90 days after the meeting at the office of the Acting Assistant Associate Director, Heritage Preservation Assistance Programs, National Park Service, U.S. Department of the Interior, 1849 C Street, NW., Room 2250 MIB, Washington, DC 20240—telephone (202) 354–2118.

Dated: October 3, 2005.

John A. Burns,

Acting Assistant Associate Director, Heritage Preservation Assistance Programs, National Park Service.

[FR Doc. 05–21221 Filed 10–24–05; 8:45am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 8, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 9, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

Guam

Guam County

Asan Patriots of World War II Memorial, 142 Nino Perdido Dr., Asan, 05001242

Marine Drive Monument, Marine Dr., Hagatna, 05001243

Illinois

Champaign County

Alpha Phi Fraternity House—Beta Alpha Chapter, (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS) 508 E. Amory Ave., Champaign, 05001250

Georgian, The, 1005 S. Sixth St., Champaign, 05001260

Cook County

Anderson—Carlson Building, 2044–48 W. Farwell Ave., Chicago, 05001259

Pacesetter Gardens Historic District, 13604—13736 S. Lowe Ave., Riverdale, 05001252

Rogers Park Manor Bungalow Historic District, (Chicago Bungalows MPS) Roughly bounded by W. Lunt Ave., N. Western Ave., both sides of W. Farwell Ave. and N. California Ave., Chicago, 05001258

Jackson County

Murphysboro Elks Lodge, 1329 Walnut St., Murphysboro, 05001255

Lake County

Linn, Howard and Lucy, House, 555 Shoreacres Dr., Lake Bluff, 05001257

Swift, Louis F., House, 255 E. Foster Place, Lake Forest, 05001256

Peoria County

International Harvester Building, 1301–1309 Southwest Washington St., Peoria, 05001254

Randolph County

Shiloh College, 13043 Walnut St., Shiloh Hill, 05001251

Will County

Downtown Peotone Historic District, Roughly N. First St. and both sides of N. Second St., roughly bounded by the alley S of Main and N by North St., Peotone, 05001253

Kansas

Barton County

Hoisington High School, (Public Schools of Kansas MPS) 218 E 7th St., Hoisington, 05001248

Clark County

Ashland Grade School, (Public Schools of Kansas MPS) 210 W. 7th St., Ashland, 05001245

Comanche County

Protection High School, (Public Schools of Kansas MPS) 210 S. Jefferson, Protection, 05001244

Cowley County

Grace Methodist Episcopal Church, 320 College St., Winfield, 05001241

Douglas County

Saint Luke African Methodist Episcopal Church, 900 New York St., Lawrence, 05001240

McPherson County

Teichgraeber—Runbeck House, 116 Mill St., Lindsborg, 05001239

Phillips County

Agra Consolidated School, (Public Schools of Kansas MPS) 941 Kansas Ave., Agra, 05001246

Reno County

Sylvia Rural High School, (Public Schools of Kansas MPS) 203 Old KS 50, Sylvia, 05001247

Riley County

Riley County Courthouse, (County Courthouses of Kansas MPS) 100 Courthouse Plaza, Manhattan, 05001249

Wabaunsee County

Wabaunsee District #1 Grammar School, (Public Schools of Kansas MPS) 56 Center St., Wabaunsee, 05001238

Louisiana

St. John The Baptist Parish Our Lady of Grace Church, Near jct. of Airline Hwy. and 3rd St., Reserve, 05001277

Maryland

Harford County

Whiteford—Cardiff Historic District, MD–PA, Whiteford Rd., Platted Parry St., Quarry Rd., W of Main St., Whiteford, 05001278

Missouri

Jackson County

Grandview Residential Historic District, 807–1111 Highgrove Rd., 13016–13020 and 13019 Grandview Rd. and 13006–13018 10th St., Grandview, 05001284

St. Louis County

Cape, Dr. Leander W., Buildings, 7401–03 Hazel and 2737–47 Sutton, Maplewood, 05001283

St. Louis Independent City Centennial Malt House, 2017–19 Chouteau Ave., St. Louis (Independent City), 05001281

LaSalle Building, 501 Olive St., St. Louis (Independent City), 05001282

Selkirk, Ben J. and Sons, Building, 4160–4166 Olive St., St. Louis (Independent City), 05001280

Montana

Yellowstone County

Acme Building, 109–111 N. Broadway, Billings, 05001279

Nebraska

Gage County

Beatrice Municipal Auditorium, 205 N. 4th St., Beatrice, 05001293

Keith County

Welsch Motor Court—Erin Plaza Motor Court, 311 E. 1st St., Ogallala, 05001295

Pierce County

Fremont, Elkhorn and Missouri Valley Railroad Depot, 304 S. Main St., Plainview, 05001291

Richardson County

Schmid, Aldred and Magdalena, Farmstead, RR1, Dawson, 05001292

New Mexico

Bernalillo County

Tijeras Pueblo Archeological Site, Address Restricted, Tijeras, 05001294

New York

New York County

Greenwich Savings Bank, 1352–1362 Broadway, New York, 05001286

Park Row Building, 15 Park Row, New York, 05001287

Sheffield Farms Stable, 3229 Broadway, New York, 05001285

Wall and Hanover Building, 63 Wall St., New York, 05001288

Rhode Island

Kent County

Pawtuxet Valley Dyeing Company, 9 Howard Ave., Coventry, 05001296

Utah

Davis County

Ford, Joseph N. and Algie, House, (Centerville MPS) 1394 N. Main St., Centerville, 05001289

Weber County

American Can Company of Utah Building Complex, 2030 Lincoln Ave., Ogden City, 05001303

Virginia

Culpeper County

Graffiti House, (Civil War in Virginia MPS) 19484 Rd., Brandy Station, 05001274

Fauquier County

Casanova Historic District, Area inc. parts of Casanova Rd., Rogues Rd. and Weston Rd., Casanova, 05001264

Markham Historic District, Pts of E. John Marshall Hwy, Farm House Rd., Leeds Manor Rd., Old Markham Rd. Poverty Hollow Ln, Rail Stop Rd. etc., Markham, 05001261

Floyd County

Floyd Historic District, Centered along Main and Osford Sts. bet. Penn Ave., and Baker St. and Sweeney and Nira St., Floyd, 05001266

Grayson County

Brookside Farm and Mill, 4161 Wilson Hwy., Independence, 05001272

Henry County

Rock Run School, 532 John Baker Rd., Fieldale, 05001268

Nelson County

Black Meadow, 17379 Wolf Trap Dr., Gordonsville, 05001262

Orange County

Willston (068–0065), 13430 Constitution Hwy., Orange, 05001270

Richmond Independent city

Atlantic Moto Company (127–6163), 1840 W. Broad St., Richmond (Independent City), 05001271

Roanoke Independent city

Gainsboro Historic District, Bounded by Wells, Centre, 1st St. Bridge and Gilmer, Commonwealth, N. Jefferson and 2nd., Patton, Harrison etc., Roanoke (Independent City), 05001276

Rockbridge County

Falling Spring Presbyterian Church Manse, 650 Falling Spring Rd., Glasgow, 05001269

Springdale, 70 Gilmore Ln., Lexington, 05001273

Shenandoah County

Moore, J.W.R., House, 5588 Main St., Mount Jackson, 05001275

Virginia Beach Independent city

Seashore State Park Historic District, 2500 Shore Dr., Virginia Beach (Independent City), 05001267

Westmoreland County

Westmoreland State Park Historic District, 1650 State Park Rd., Montross, 05001265

Wise County

Virginia City Church, Bull Run Rd., St. Paul, 05001263

Wisconsin

Clark County

Calway, Forrest D. and Marian, House, 318 E. Fourth St., Neillsville, 05001297

Green County

Freitag Homestead, N7053 WI 69/39, Washington, 05001302

Monroe Water Tower, 16th Ave. and 20th St., Monroe, 05001290

Jefferson County

Fort Atkinson Water Tower, S. High and Fourth Sts., Fort Atkinson, 05001298

Richland County

Clipped Wing Eagle Mound, Address Restricted, Eagle, 05001300

Wisconsin

Richland County

Eagle Township Mound Group, Address Restricted, Eagle, 05001301

Hunting Eagle Mound, Address Restricted, Eagle, 05001299

A request for REMOVAL has been made for the following resource:

Arkansas

Polk County

Bee Mountain Fire Tower (Facilities Constructed by the CCC in Arkansas MPS) FS Rd. 30 NE of Vandervoort, Ouachita NF Vandervoort, 93001078

[FR Doc. 05–21225 Filed 10–24–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Shasta Lake Water Resources Investigation, Shasta and Tehama Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of additional public scoping meeting.

SUMMARY: The Bureau of Reclamation will hold an additional public scoping meeting to solicit input on the scope of the environmental document, alternatives, concerns, and issues to be addressed in the EIS to be prepared. The notice of intent to prepare the EIS and notice of public scoping meetings was published in the **Federal Register** on October 7, 2005 (70 FR 58744).

DATES: The additional scoping meeting will be held on Thursday, November 3, 2005, from 11 a.m. to 3 p.m.

The existing meeting dates are as follows:

- October 24, 2005, 10 a.m. to 1 p.m., Sacramento, CA.
- October 24, 2005, 6 to 9 p.m., Concord, CA.
- October 26, 2005, 1 to 4 p.m., Los Angeles, CA.
- November 1, 2005, 6 to 9 p.m., Fresno, CA.
- November 2, 2005, 6 to 9 p.m., Dunsmuir, CA.
- November 3, 2005, 6 to 9 p.m., Red Bluff, CA.

ADDRESSES: The additional scoping meeting will be held at the Redding Veterans Hall, 1605 Yuba Street, Redding, CA.

The existing public scoping meeting locations are:

- Federal Building, 2800 Cottage Way, Rooms C–1001 and C–1002, Sacramento, CA.
- Heald Conference Center, 5130 Commercial Circle, Concord, CA.
- Metropolitan Water District of Southern California, 700 North Alameda Street, Room 1–102, Los Angeles, CA.
- Piccadilly Inn, 2305 West Shaw Avenue, in Fresno, CA.
- Dunsmuir Community Building, 4835 Dunsmuir Avenue in Dunsmuir, CA.
- Red Bluff Community Center, Auditorium, 1500 South Jackson.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Garcia, Reclamation Project Manager, at the above address, at (916) 978–5009, TDD (916) 978–5608, or via fax at (916) 978–5094 or e-mail at *dgarcia@mp.usbr.gov.* If special assistance is required, please contact Ms. Sammie Cervantes at (916) 978–5189, TDD (916) 978–5608, or via e-mail at *scervantes@mp.usbr.gov* no less than 5 working days prior to the meetings.

Dated: October 19, 2005.

Michael Nepstad,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 05–21260 Filed 10–24–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 27, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a basic Class of Controlled Substance.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 189. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Title 21, United States Code, Section 826, and Title 21, Code of Federal Regulations (CFR) 1303.22 require that any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II and who desires to manufacture a quantity of such class must apply on DEA Form 189 for a manufacturing quota for such quantity of such class.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 36 persons complete 297 individual DEA Forms 189, at 30 minutes per form, for an annual burden of 149 hours.

(6) An estimate of the total public burden (in hours) associated with

the collection: It is estimated that there are 149 annual burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 18, 2005.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–21252 Filed 10–24–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Reinstatement of a Previously Approved Collection; Comments Requested

ACTION: 60-day notice of information collection under review: 2006 Census of Law Enforcement Training Academies.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 27, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Hickman, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2006 Census of Law Enforcement Training Academies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–52.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, and Local Government. This information collection is a census of law enforcement training academies. The information will provide national statistics on law enforcement training staff, recruits/trainees, curricula, facilities, and policies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 650 respondents will complete a one and one-half hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 975 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530, or by e-mail at *brenda.e.dyer@usdoj.gov*.

Dated: October 14, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–21251 Filed 10–24–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 19, 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 contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Office of Disability Employment Policy, 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: Office of Disability Employment Policy.

Type of Review: Extension of currently approved collection.

Title: Solicitation of Nominations for the Department of Labor's New Freedom Initiative Award.

OMB Number: 1230–0002.
Frequency: Annually.
Type of Response: Reporting.
Affected Public: Business or other for-profit; not-for-profit institutions; individuals or households; Federal Government; and State, local, or tribal government.
Number of Respondents: 100.
Number of Annual Responses: 100.
Estimated Time per Response: 10 hours.
Total Burden Hours: 1,000.
Total Annualized capital/startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The Office of Disability Employment Policy (ODEP) within the Department of Labor was created under Public Law 106–554, the Consolidated Appropriations Act of 2001 (enacting H.R. 5656, see Title I, ''Departmental Management'') 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301. ODEP was established to bring a heightened and permanent focus on increasing the employment of persons with disabilities. In carrying out the mission of ODEP, this collection of information (solicitation of nominations to receive an award) is planned to honor individuals, businesses and non-profit organizations which have been exemplary in furthering the employment-related objectives of the New Freedom Initiative.

Dated: October 19, 2005.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 05–21276 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,821]

Burlington Industries LLC Corporate Office, a Division of WL Ross & Company LLC Now Known as International Textile Group, Inc., Greensboro, NC

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, (26 U.S.C. 2913), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 9, 2004, applicable to workers of Burlington Industries LLC, Corporate Office, a division of WL Ross & Company LLC, Greensboro, North Carolina. The notice was published in the **Federal Register** on July 7, 2004 (69 FR 40984).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that Burlington Industries LLC, Corporate Office, a division of WL Ross & Company LLC was purchased by International Textile Group, Inc. during 2004. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for International Textile Group, Inc., Greensboro, North Carolina.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Burlington Industries LLC, Corporate Office, a division of WL Ross & Company LLC, now known as International Textile Group who was adversely affected by increased imports.

The amended notice applicable to TA–W–54,821 is hereby issued as follows:

All workers of Burlington Industries LLC, Corporate Office, a division of WL Ross & Company LLC, now known as International Textile Group, Inc., Greensboro, North Carolina (TA–W–54,821), who became totally or partially separated from employment on or after February 5, 2004, through June 9, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of October 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5882 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,694]

Cequent Consumer Products, a Subsidiary of Trimas Corporation, Sheffield, PA; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated September 15, 2005, a company official requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The negative determination was signed on August 16, 2005, and was published in the **Federal Register** on September 8, 2005 (70 FR 53391).

The workers of Cequent Consumer Products, a subsidiary of Trimas Corporation, Sheffield, Pennsylvania were certified eligible to apply for Trade Adjustment Assistance (TAA) on August 16, 2005.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

In the request for reconsideration, the company official provided new information confirming that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Cequent Consumer Products, a subsidiary of Trimas Corporation, Sheffield, Pennsylvania, who became totally or partially separated from employment on or after August 3, 2004 through August 16, 2007, are eligible to apply for trade 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 12th day of October 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5884 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,291B]

Cone Mills Corporation, Cone White Oak, LLC Division and Corporate Headquarters Now Known as International Textile Group, Inc., Greensboro, NC

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, (26 U.S.C. 2913), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 3, 2003, applicable to workers of Cone Mills Corporation, Cone White Oak, LLC Division, Greensboro, North Carolina. The notice was published in the **Federal Register** on April 6, 2004 (69 FR 18110). The certification was amended on March 26, 2004 to include the workers of the Corporate Headquarters of the subject firm. The notice was published in the **Federal Register** on April 16, 2004 (69 FR 20643).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that Cone Mills, LLC was acquired by International Textile Group, Inc. and beginning in January 2005, the corporate workers' wages are being reported under the Unemployment Insurance (UI) tax account for International Textile Group, Inc., Greensboro, North Carolina.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Cone Mills Corporation, Cone White Oak, LLC Division and Corporate Headquarters, now known as International Textile Group who were adversely affected by increased imports.

The amended notice applicable to TA–W–53,291B is hereby issued as follows:

All workers of Cone Mills Corporation, Cone White Oak, LLC Division and Corporate Headquarters, now known as International Textile Group, Inc., Greensboro, North Carolina (TA–W–53,291B), who became totally or partially separated from employment on or after October 14, 2002, through December 3, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 17th day of October 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5881 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,670]

Henkel Corporation; Henkel Technologies Division Olean, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Henkel Corporation, Henkel Technologies Division, Olean, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,670; Henkel Corporation, Henkel Technologies Division, Olean, New York (October 12, 2005).

Signed at Washington, DC this 13th day of October 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–5883 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,901]

Barrett Business Services, Inc., Santa Ana, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 8, 2005 in response to a worker petition filed a California state workforce agent on behalf of workers at Barrett Business Services, Inc., Santa Ana, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5889 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,913]

Canteen Services, Belmont, 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 Canteen Services, Belmont, 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. E5–5890 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,805]

Edward Fields, Inc., Formerly Known as Jack and Joel, Inc., College Point, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 23, 2005, applicable to workers of Edward Fields, Inc., College Point, New York. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of custom made carpets and rugs.

The subject firm originally named Jack and Joel, Inc., was renamed Edward Fields, Inc. in April 2005. The State agency reports that workers' wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Jack and Joel, Inc., College Point, New York.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Edward Fields, Inc. who were adversely affected by increased company imports.

The amended notice applicable to TA–W–57,805 is hereby issued as follows:

All workers of Edward Fields, Inc., formerly known as Jack and Joel, Inc., College Point, New York, who became totally or partially separated from employment on or after July 28, 2004, through September 23, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of October 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5887 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,732]

Microtek Medical, a Subsidiary of Microtek Medical Holdings, Inc., Columbus, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for 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 USA 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on September 9, 2005, applicable to workers of Microtek Medical, a subsidiary of Microtek Medical Holdings, Inc., Columbus, Mississippi. The notice was published in the **Federal Register** on October 6, 2005 (70 FR 58478).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sterile drapes and covers for microscopes, cameras and patients and are not separately identifiable by product line.

New findings show that there was a previous certification, TA–W–42,178, issued on October 28, 2002, for workers of Microtek Medical, a subsidiary of Microtek Medical Holdings, Inc., Columbus, Mississippi who were engaged in employment related to the production of disposable medical drapes. That certification expired October 28, 2004. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from August 12, 2004 to October 29, 2004, for workers of the subject firm.

The amended notice applicable to TA–W–57,732 is hereby issued as follows:

All workers of Microtek Medical, Inc., a subsidiary of Microtek Medical Holdings, Inc., Columbus, Mississippi, who became totally or partially separated from employment on or after October 29, 2004, through September 9, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974. I further determine that all workers of Microtek Medical, Inc., a subsidiary of Microtek Medical Holdings, Inc., Columbus, Mississippi are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of October, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5885 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,816]

Nidec America Corporation, a Subsidiary of Nedec Corporation—Japan Including On-Site Leased Workers of Jaci Carroll Staffing and Alternative Employment, Inc., Torrington, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 6, 2005, applicable to workers of Nidec America Corporation, Manufacturing Division, A Subsidiary of Nidec Corporation—Japan, including on-site leased workers of Jaci Carroll Staffing and Alternative Employment, Inc., Torrington, Connecticut. The notice was published in the **Federal Register** on October 6, 2005 (70 FR 584777).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department limited the certification coverage to only workers of the Manufacturing Division of the subject firm.

The intent of the Department's certification is to cover all workers manufacturing fans and motors at Nidec America Corporation, A Subsidiary of Nidec Corporation—Japan, Torrington, Connecticut, who were adversely affected by increased company imports.

Accordingly, the Department is amending the certification determination to properly reflect this matter.

The amended notice applicable to TA–W–57,816 is hereby issued as follows:

All workers of Nidec America Corporation, A Subsidiary of Nidec Corporation—Japan, including on-site leased workers of Jaci Carroll Staffing and Alternative Employment, Inc., Torrington, Connecticut, who became totally or partially separated from employment on after August 22, 2004, through September 6, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade Adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 17th day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5888 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,781]

Nu-Gro Technologies, Inc., Gloversville, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Nu-Gro Technologies, Inc., Gloversville, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,781; Nu-Gro Technologies, Inc., Gloversville, New York (October 11, 2005).

Signed at Washington, DC this 13th day of October 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–5886 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans Employment and Training

President's National Hire Veterans Committee; Notice of Open Meeting

The President's National Hire Veterans Committee was established under 38 U.S.C. 4100 Public Law 107–288, Jobs For Veterans Act, to furnish information to employers with respect to the training and skills of veterans and disabled veterans, and to the advantages afforded employers by hiring veterans with training and skills and to facilitate the employment of veterans and disabled veterans through participation in Career One Stop National Labor Exchange, and other means.

The President's National Hire Veterans Committee will meet on Thursday, November 17, 2005 beginning at 1 p.m. in the Board Room of the United Brotherhood of Carpenters, 100 Constitution Avenue, NW., Washington, DC.

The committee will discuss raising corporate awareness about the advantages of hiring veterans.

Individuals needing special accommodations should notify Bill Offutt at (202) 693–4717 by November 10, 2005.

Signed at Washington D.C., this 19th day of October, 2005.

Charles S. Ciccolella,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 05–21277 Filed 10–24–05; 8:45 am]

BILLING CODE 4510–79–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–28641]

Environmental Assessment and Finding of No Significant Impact for Department of the Air Force's Request for 10 CFR 20.2002 Authorization, for Disposal of Four Tanks Containing Depleted Uranium to a Subtitle C RCRA Hazardous Waste Disposal Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Rachel S. Browder, M.S., Health Physicist, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; Telephone: (817) 276–6552; fax number: (817) 860–8122; e-mail: *rsb3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of a request dated June 23, 2004, by the U.S. Department of the Air Force (Air Force), for disposal of four M–47 tanks containing depleted uranium (DU) from the 98th Range Wing at Nellis Air Force Base, Nevada, to a Subtitle C RCRA hazardous waste disposal facility. The request for approval is submitted pursuant to 10 CFR 20.2002, ''Method of Obtaining Approval of Proposed Disposal Procedures.'' NRC staff evaluated the licensee's analyses of disposal to a Subtitle C RCRA hazardous waste disposal facility, to demonstrate compliance with 10 CFR 20.2002. The staff used the general guidance for dose modeling as documented in NUREG–1727, SRP 5.2, and supplemented by the decommissioning-specific guidance of the license termination rule. The dose assessment for the disposal of the subject material would result in doses less than 0.01 millisievert (1 millirem) per year. This action will revise the Air Force Master Materials License No. 42–23539–01AF, to authorize the specific disposal of four M–47 tanks containing DU material to a Subtitle C RCRA hazardous waste disposal facility, pursuant to 10 CFR 20.2002, for procedures not otherwise authorized in the regulations of this chapter. This proposed action would also exempt the low-contaminated material authorized for burial from further Atomic Energy Act (AEA) and NRC licensing requirements. The NRC staff has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. The NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate for the proposed action.

II. Environmental Assessment

Background

The Air Force used four U.S. Army M–47 tanks as target practice at Nellis Air Force Base, Nevada. The M–47 tanks were contaminated with DU, as a result of A–10 aircraft target penetrator rounds. Each tank contains less than forty GAU–8 30mm DU rounds; each round contains 300 grams of DU. As a result of the kinetic energy released when a tank is hit by a DU round, some of the DU from the round will bond with the metal surrounding the entry point and the interior of the chamber. The DU is a metal form with a minor contribution as an oxide. The mass of the DU per tank is approximately 12 kg, and when averaged over the mass of the tank (60 tons), the source material is less than one-twentieth of 1 percent (0.05 percent) of the mixture. The Air Force demonstrated by calculation that the potential dose consequence is less than 1 mrem per year, based on the proposed burial of the M–47 tanks in a RCRA facility.

Identification of the Proposed Action

The proposed action is approval of the disposal of four (4) M–47 tanks from Nellis Air Force Base, Nevada, to U.S. Ecology facility in Grand View, Idaho, which is a Subtitle C RCRA hazardous waste disposal facility. The Air Force has conservatively assumed the inventory of DU in each of the four M–47 tanks and calculated the potential dose as being less than 1 mrem per year, if all four tanks were to be disposed of,

in such a facility. This proposed action would also exempt the low-contaminated material authorized for burial from further Atomic Energy Act (AEA) and NRC licensing requirements.

The Need for the Proposed Action

The proposed action is needed to dispose of four M–47 tanks at a RCRA Subtitle C hazardous waste disposal facility. The Air Force maintains the clean-up of the range at Nellis Air Force Base by implementing an on-going process to dispose of objects that require disposition or decontamination in lieu of postponing clean-up efforts until there are extensive objects which require disposition. Therefore, the disposal of the four M–47 tanks are part of the Air Force on-going maintenance efforts on the range.

Alternatives to the Proposed Action

The alternatives to the proposed action include: (1) No action alternative, (2) decontamination of the M–47 tanks, or (3) handling the M–47 tanks as low-level radioactive waste and shipping the tanks to a licensed low-level waste facility. The Air Force performed an evaluation to determine if the costs to decontaminate the M–47 tanks would be comparable to or less than the costs for burial in a Subtitle C RCRA hazardous waste disposal facility. For the respective four M–47 tanks, the Air Force determined the costs for burial would be less than the cost to decontaminate the tanks. Disposal of the four M–47 tanks in the manner proposed is protective of the health and safety, is consistent with as low as reasonably achievable, and is the most cost-effective alternative.

Environmental Impacts of the Proposed Action

The four M–47 tanks were used as target practice in Range 63, Target Area 10, at Nellis Air Force Base. Nellis Air Force Base is located approximately 8 miles northeast of Las Vegas, Nevada. The base itself covers more than 14,000 acres, while the total land area occupied by Nellis and its restricted ranges is about 5,000 square miles. The 98th Range Wing is responsible for the 2.9 million acre Nevada Test and Training Range, located just north of Las Vegas. The distance between Las Vegas and US Ecology, Idaho, is approximately 800 miles. The driving time would be approximately 16 hours (assuming average speed of 50 miles per hour). The Air Force's dose analysis conservatively assumed the same driver transported all four tanks in four separate shipments.

The NRC has completed its evaluation of the proposed action and concludes there are no significant radiological environmental impacts associated with the disposal of four M–47 tanks to US Ecology, Idaho, which is a Subtitle C RCRA hazardous waste disposal facility. The Air Force's analyses conservatively assumed the inventory of DU in each of the four M–47 tanks was the maximum number of penetrators (i.e., 40 rounds) which potentially hit each tank. The Air Force analyzed the dose to a transport driver, loader, burial worker, and long-term impacts to a residence. While the Air Force did not analyze the groundwater impacts from the disposal, the NRC staff reviewed previous analyses in support of NUREG–1640, ''Radiological Assessment for Clearance of Materials from Nuclear Facilities,'' which indicated that the groundwater pathway is not a controlling factor for DU. Each of the analyses conservatively estimated the exposure to less than 1 mrem total dose per year.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites nor does it affect non-radiological plant effluents. There may be a slight increase in air quality and noise impacts during the loading and transportation of each tank. However, there are no expected adverse impacts to air quality as a result of the loading and transportation of the four M–47 tanks. These activities will be short in duration and minimal as compared to other activities at the base. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

The NRC has evaluated whether cumulative environmental impacts could result from an incremental impact of the proposed action when added to other foreseeable actions in the area. The proposed NRC approval of the 10 CFR 20.2002 alternative disposal procedure, when combined with known effects on resource areas of the site, are not anticipated to result in any cumulative impacts at the site.

The proposed action and attendant exemption of the material from further AEA and NRC licensing requirements will not significantly increase the probability or consequence of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Accordingly, the NRC concludes there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). The implications from the no-action alternative is that the tanks would remain on the range until disposition sometime in the future. The impacts would therefore be limited to the site, and there would be no transportation impacts and no disposal considerations or impacts until sometime in the future.

Another alternative to the proposed action, is that the Air Force may consider decontamination of the four M–47 tanks. The environmental impacts would increase as a result of this alternative from the air quality, noise and water usage during the decontamination process. Additionally, there would be an increase in occupational exposure as a result of the decontamination process.

Disposing of the four M–47 tanks in a low-level waste disposal facility is another alternative to the proposed action. This alternative has similar environmental impacts as the proposed action.

Conclusion

Based on its review, the NRC staff finds that the environmental impact of the proposed action are either similar to, or less impactive than, the alternatives to the proposed action. If the proposed action is denied, the licensee may be required to ship the material to an off-site low level radioactive waste disposal facility. The costs associated with off-site disposal at a low-level waste facility greatly exceeds the cost of burial under the proposed action, with no significant benefit to the environment. Since the proposed action will not significantly impact the quality of the human environment, and the proposed action complies with the criteria in 10 CFR 20.2002 for alternate disposal procedure, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC staff has determined that the proposed action is not a major decommissioning activity and will not affect listed or proposed endangered species, nor critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, NRC staff determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties, as the M–47 tanks are

currently residing in Range 63, Target Area 10, at Nellis Air Force Base. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

On September 23, 2004, the staff consulted with two Nevada State officials, Mr. Stan Marshall of the Radiological Health Section of the Nevada State Health Division, Bureau of Health Protection Services and Ms. Jolene Johnson of the Nevada Division of Environmental Protection, regarding the environmental impact of the proposed action. Neither State Official had any comments regarding the draft EA. Additionally, the staff consulted with the Idaho State official, Mr. Doug Walker of the Idaho Department of Environmental Quality. On November 2, 2004, the State of Idaho, Department of Environmental Quality, provided comments regarding the draft EA, and those comments have been incorporated in the final EA.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the license amendment request and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you may access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: U.S. NRC Radioactive Materials License: Department of the Air Force, Docket Number 030–28641, License Number 42–23539–01AF; Request letter dated June 23, 2004, U.S. Department of the Air Force (ML041810555); NRC Technical Review of Code of Federal Regulations (10 CFR) Part 20.2002 request by U.S. Department of the Air Force (ML042120512); Safety Evaluation Report, August 5, 2005 (ML052170209); Environmental Assessment and FONSI. August 5, 2005 (ML052170216); Title 10 Code of Federal Regulations, 20.2002, ''Method of Obtaining Approval of Proposed Disposal Procedures''; and Title 10 Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

If you do not have access to ADAMS or if there are problems with accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at (800) 397–4203, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at Arlington, Texas, this 12th day of October 2005

For the Nuclear Regulatory Commission.

Jack E. Whitten,

Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E5–5878 Filed 10–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Amergen Energy Company, LLC; Clinton Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to AmerGen Energy Company, LLC (AmerGen or the licensee), for operation of Clinton Power Station, Unit 1 (CPS), located in DeWitt County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Technical Specification 4.3, ''Fuel Assemblies,'' for CPS to reflect the increased fuel storage capacity in the spent fuel pool (SFP) and the addition of fuel storage capacity in the fuel cask storage pool. The proposed expansion will increase the total storage capacity from 2,512 to 4,159 fuel assemblies.

The proposed action is in accordance with the licensee's application dated August 18, 2004, as supplemented on May 13 and 25, June 14, and August 17, 2005.

The Need for the Proposed Action

The loss of full core discharge capability at CPS is projected to occur during the February 2006 refueling outage, based on current projections. To maintain spent fuel storage capability, AmerGen would like to expand SFP storage capacity. The proposed action would result in the increased fuel storage capacity in the SFP and the addition of fuel storage capacity in the fuel cask storage pool. The proposed expansion will increase the total storage capacity from 2,512 to 4,159 fuel assemblies. The additional capacity is expected to allow operation without loss of full-core discharge capability until the year 2016.

Environmental Impacts of the Proposed Action

Radioactive Waste Treatment

CPS uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) for CPS, Unit 1, dated May 1982. The proposed changes to the SFP will not involve any change in the waste treatment systems described in the FES.

Gaseous Radioactive Wastes

The increase in the number of spent fuel assemblies stored in the SFP will potentially result in an increase in the radioactive gasses evolving from the pool. However, the level of gaseous radioactivity in the pool water is dominated by the most recent reactor core offload to the pool, not the fuel already stored in the pool. Therefore, the storage of additional aged spent fuel assemblies in the pool will have a minimal contribution to radioactivity in the pool. The overall release of radioactive gases from CPS will remain within the limits of Title 10, *Code of Federal Regulations* (10 CFR), Section 20.1301.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the pools' purification system. These spent resins are disposed of as solid radioactive waste. Resin replacement is determined primarily by the requirement for water clarity and is normally done approximately once per year. No significant increase in the volume of solid radioactive waste is expected with the expanded storage capacity. During pool re-racking operations, small amounts of additional waste resin may be generated by the

pools' cleanup systems on a one-time basis. Additional solid radioactive waste will consist of the existing contaminated fuel storage racks. The old existing fuel storage racks will be washed down prior to being removed from the pool to remove as much contamination as possible. Then the racks will be shipped to a volume reduction facility for processing and subsequent disposal at a burial site. Shipping containers and procedures will conform to Federal regulations as specified in 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material,'' and to the requirements of any state through which the shipment may pass, as set forth by the state department of transportation.

Liquid Radioactive Wastes

The release of radioactive liquids will not be affected directly as a result of the SFP modifications. The SFP ion exchanger resins remove soluble radioactive materials from the pool water. When the resins are replaced, the small amount of resin sluice water that is released is processed by the radwaste systems. As previously stated, the frequency of resin replacement may increase slightly during the installation of the new racks. However, the increase in the amount of radioactive liquid released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Occupational Dose Consideration

All operations involved in the fuel rack installations will follow detailed procedures prepared in accordance with as low as reasonably achievable (ALARA) principles. Personnel performing the re-racking operation will be given pre-job briefings to ensure awareness of job responsibilities and necessary precautions. Radiation protection personnel at CPS will monitor and control work, personnel traffic, and equipment movement in the SFP area to minimize contamination and assure that exposures are maintained ALARA. Personnel monitoring equipment (including thermoluminescence dosimeter (TLDs)), protective clothing, and respiratory protective equipment will be issued as required. Alarming dosimeters will be used as needed to confirm exposure and dose rates to workers.

The licensee plans to use divers in the pool to remove underwater interferences and assist in fuel storage rack removal. Procedures for controlling diving operations will comply with the guidance in Regulatory Guide 8.38, ''Control of Access to High and Very High Radiation Areas in Nuclear Power Plants.'' During the diving operations, the licensee estimates that dose rates will average from 20 to 40 mrem/hr. Special precautions such as physical barriers or tethers will be used to prevent a diver from coming in close proximity to highly radioactive materials in the pool. The diver will be confined to a safe diving area within the pool, which will be clearly delineated in the pre-job brief as well as physically marked in the pool. The diver will be visually monitored, either directly or remotely, at all times during the dive. In addition, the diver will be monitored by a remote dose telemetry system. This system enables the radiation protection personnel supervising the dive to obtain the dose being delivered to the diver's body. The diver will have a hand-held probe to complete radiological surveys when entering the water. Divers exiting the pool will be monitored for radiation and contamination, as will all items removed from the pool. Appropriate measures will be taken to minimize the spread of contamination. The existing fuel racks that are removed from the pool will be rinsed and surveyed as they break the water's surface, allowed to ''drip dry,'' and then placed in plastic shipping bags to contain any contamination until they are placed in shipping containers to be taken offsite for disposal.

The increased storage capacity will not affect dose rates in areas adjacent to the SFP and transfer canal. The concrete side walls of the SFP provide sufficient shielding that the maximum dose rate in adjacent areas from fuel in the SFP is calculated to be 2 mrem/hr, if the pool is completely filled with freshly offloaded fuel. The walls of the fuel cask storage pool are not as thick, and the licensee's shielding calculations indicate that filling the racks that are proposed to be installed in the fuel cask storage pool with freshly offloaded fuel could result in dose rates of up to 26 mrem/hr in adjacent areas. This could be mitigated by filling the outer (peripheral) three rows of the storage cells with older (more decayed) fuel, thus reducing the maximum dose rate in the adjacent areas to 4.4 mrem/hr. The licensee will implement administrative controls to ensure that fuel stored in the peripheral storage cells will have been stored outside of the reactor for a minimum of 10 years, allowing sufficient decay time.

On the basis of its review of the licensee's proposal, the NRC staff concludes that the CPS SFP re-racking operations can be performed in a manner that will ensure that doses to workers will be maintained ALARA and that the generation of additional solid radioactive waste will be minimized. The staff concludes that the projected dose for the project of 7 to 14 person-rem is in the range of doses for similar modifications at other nuclear plants.

Accident Considerations

The licensee evaluated the impact of newly installed higher density storage racks in the SFP and fuel storage in the fuel cask storage pool on the current design basis accident (DBA) dose analyses, as discussed in the CPS Updated Safety Analysis Report. The DBAs that are potentially affected by the proposed change to the SFP storage capacity are the fuel handling accident (FHA) and the cask drop accident. By Amendment No. 147, dated April 3, 2002, the CPS licensing basis for the FHA was changed by a selective implementation of an alternative source term, per the provisions of 10 CFR 50.67. In support of that amendment request, AmerGen demonstrated that the radiological consequences of an FHA, either in the containment or in the fuel building, are within the offsite and control room dose acceptance criteria specified in NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' and General Design Criterion 19 of 10 CFR Part 50, Appendix A, and well within the dose criteria given in 10 CFR 50.67.

The NRC staff performed a review of the licensee's analysis of the proposed action on DBA dose analyses. Adding additional spent fuel storage does not increase the amount of fuel assumed to be damaged in an FHA, and the proposed action does not significantly change the source term in the DBA; therefore, the staff finds that the current licensing basis FHA dose analysis remains applicable after the expansion of the spent fuel storage capacity. The licensee plans to install spent fuel storage racks in the fuel cask storage pool. The licensee will implement administrative controls to ensure that fuel will be removed from the racks in the fuel cask storage pool prior to any fuel cask being moved in the area. Therefore, there would be no damage to spent fuel or radiological consequences as a result of a cask drop on the empty fuel storage racks in the fuel cask storage area. Based on its review, the staff finds that the current licensing basis analysis of the cask drop accident remains bounding with respect to radiological consequences.

During removal and installation of fuel storage racks in the SFP and fuel cask storage pool, AmerGen will ensure that all work will be controlled and performed in strict accordance with specific written guidance. Any

movement of fuel assemblies required to support removal and installation of racks will be performed as during normal refueling operations, and no shipping cask movement will be performed during this time frame. The licensee will determine and follow safe load paths and written procedures to ensure that no racks are carried over any portions of the existing fuel storage racks containing fuel assemblies.

Based on its review, the staff concludes that the current DBA dose analyses remain bounding for the installation of expanded spent fuel storage capacity in the SFP and fuel cask storage pool.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) proposed high-level radioactive waste repository is not expected to begin receiving spent fuel in the near future. Therefore, shipping the spent fuel to the DOE repository is not considered an alternative to increased onsite fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from CPS is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities.

Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipping the Fuel Offsite to Another Utility or another Exelon/AmerGen Site

The shipment of fuel to another utility or transferring fuel to another of the licensee's facilities would provide short-term relief from the shortage of SFP storage at CPS. However, the Nuclear Waste Policy Act of 1982, Subtitle B, Section 131(a)(1) clearly places the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The SFPs at the other reactor sites were designed with capacity to accommodate spent fuel from those particular sites. Therefore, transferring spent fuel from CPS to other sites would create storage capacity problems at those locations. The shipment of spent fuel to another site or transferring it to another Exelon/AmerGen site is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

Alternatives Creating Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies into a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the time-consuming consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the need for special security provisions and high cost. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include security, land consumption, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost. The alternative of constructing and licensing new SFPs is not practical for CPS because such an effort would require about 10 years to complete and would be an expensive alternative.

The alternative technologies that could create additional storage capacity involve additional fuel handling with an attendant opportunity for an FHA, involve higher cumulative dose to workers affecting the fuel transfers, require additional security measures that are significantly more expensive, and would not result in a significant reduction in environmental impacts compared to the proposed re-racking modifications.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the SFPs and, thus, increase the amount of time before the maximum storage capacities of the SFPs are reached. However, operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by reducing power is not considered a practical alternative.

Impact on SFP Storage From Increasing Length of Fuel Cycle

By letter dated May 20, 2004, as supplemented May 23 and September 30, 2005, the licensee requested changes to the Technical Specification Surveillance Requirement frequencies to support 24-month fuel cycles at CPS in accordance with the guidance of Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle.'' Currently, this request is under review by the NRC staff. If this request is approved, CPS will experience a loss of full core discharge capability sooner. Therefore, this is not a practical alternative to the proposed action.

The No-Action Alternative

The NRC staff also considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The

environmental impacts of the proposed action and this alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the FES for CPS, Unit 1, dated May 1982.

Agencies and Persons Contacted

In accordance with its stated policy, on September 27, 2005, the NRC staff consulted with Illinois State Official, Frank Niziolek of the Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 18, 2004, as supplemented by letters dated May 13 and 25, June 14, and August 17, 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, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the 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 at 1–800–397–4209, or 301–415–4737, or send an e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 17th day of October, 2005.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Sr. Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5874 Filed 10–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of October 24, 31, November 7, 14, 21, 28, 2005.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of October 24, 2005

Wednesday, October 26, 2005

1:20 p.m.
Affirmation Session (Public Meeting) (Tentative).
a. U.S. Army (Jefferson Proving Ground Site) (Materials License Amendment) (tentative).
b. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), Docket Nos. 50–336–LR & 50–423–LR, LBP–05–16 (July 20, 2005) (tentative).
c. Amergen Energy Co. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50–289–LT–2 (tenative).
d. Exelon Generation Company, LLC & PSEG Nuclear, LLC (Peach Bottom Atomic Power Station, Units 2 and 3, Docket Nos. 50–277–LT & 50–278–LT (tentative).

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1).

Thursday, October 27, 2005

10 a.m.
Discussion of Security Issues (Closed—Ex. 1).

Week of October 31, 2005—Tentative

Tuesday, November 1, 2005

9:30 a.m.
Briefing on Implementation of Davis-Besse Lessons Learned Task Force (DBLLTF) Recommendations (Public Meeting). (Contact: Brendan Moroney, (301) 415–3974).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of November 7, 2005—Tentative

There are no meetings scheduled for the Week of November 7, 2005.

Week of November 14, 2005—Tentative

There are no meetings scheduled for the Week of November 14, 2005.

Week of November 21, 2005—Tentative

Monday, November 21, 2005

9:30 a.m.
Briefing on Status of New Reactor Issues, Part 1 (Public Meeting). (Contact: Laura Dudes, (301) 415–0146).

1:30 p.m.
Briefing on Status of New Reactor Issues, Part 2 (Public Meeting). (Contact: Laura Dudes, (301) 415–0146).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of November 28, 2005—Tentative

Wednesday, November 30, 2005

9:30 a.m.
Briefing on EEO Program (Public Meeting). (Contact: Corenthis Kelley, (301) 415–7380).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information. Michelle Schroll, (301) 415–1662.

Additional Information

By a vote of 5–0 on October 18, 2005, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of a. Louisiana Energy Services, L.P. (National Enrichment Facility), Intervenors' Petition for Review of LBP–05–13 (Decision on Environmental Contentions); b. Louisiana Energy Services, L.P. (National Enrichment Facility), Licensing Board's Referral of Memorandum and Order Rejecting Amended and Supplemental Contentions; and c. Private Fuel Storage (Independent Spent Fuel Storage Installations) Docket No. 72–22–ISFSI; Review of Board's September 15, 2005 order regarding safeguards redactions'' be held October 19, 2005, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 20, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–21337 Filed 10–21–05; 9:54 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 30 to October 13, 2005. The last biweekly notice was published on October 11, 2005 (70 FR 59082).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also 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 petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: September 13, 2005.

Description of amendment request: The amendment would reduce the temperature at which shutdown and control rod cluster control assemblies (RCCA) drop testing is done from greater than or equal to 551 °Fahrenheit (F) to greater than or equal to 500 °F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. DNC [Dominion Nuclear Connecticut, Inc.] is proposing to change the temperature at which the shutdown and control RCCA drop tests are performed from ''greater than or equal to 551 °F,'' to ''greater than or equal to 500 °F.'' The proposed change does not modify any plant equipment and does not impact any failure modes that could lead to an accident. Additionally, the proposed change has no effect on the consequence of any analyzed accident since the change does not affect the function of any equipment credited for accident mitigation. Based on this discussion, the proposed amendment does not increase the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not modify any plant equipment and there is no impact on the capability of existing equipment to perform its intended functions. No system setpoints are being modified and no changes are being made to the method in which plant operations are conducted. No new failure modes are introduced by the proposed change. The proposed amendment does not introduce accident initiators or malfunctions that would cause a new or different kind of accident.

As noted above, the proposed change does not affect the revisions to plant procedures, which were made to address Westinghouse Nuclear Safety Advisory Letter, NSAL–00–016 (Rod Withdrawal from Subcritical Protection in Lower Modes, issued in 2000).

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. The TS [technical specification] change does not involve a significant reduction in margin because the acceptance criterion for the RCCA drop time will not change. The proposed change will reduce the minimum RCCA drop test temperature from greater than or equal to 551 °F to greater than or equal to 500 °F. This will slightly increase the measured test

RCCA drop time. However, the measured test RCCA drop time is required to remain within the current TS limit of 2.7 seconds and the 2.19 seconds for surveillance testing acceptance criteria (plant specific seismic allowance of 0.51 seconds). The proposed change does not affect any of the assumptions used in the accident analysis, nor does it affect any operability requirements for equipment important to plant safety. Therefore, the margin of safety is not impacted by the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: Darrell J. Roberts.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: September 13, 2005.

Description of amendment request: The changes revise surveillance requirements for the recirculation spray system (RSS) to verify proper initiation of recirculation spray through actuation by the refueling water storage tank (RWST) low-low level signal instead of actuation by a timer.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The RSS is only an accident mitigation system. As such, changes in the operation of RSS cannot have an impact on the probability of an accident. The delay in the start of the RSS pump is to assure there is sufficient water in the containment sump for adequate RSS pump NPSH [net positive suction head] and margin to suction pipe flashing in light of the debris analysis conducted in response to GL [Generic Letter] 2004–02. Containment analyses have been performed to demonstrate that there is no impact on the peak containment pressure and temperature following a LOCA [loss-of-coolant accident]. While there are some changes in the predicted post-LOCA environmental conditions, evaluations have been performed to show that there is no significant impact on the environmental qualification for equipment inside containment. The impact to piping and supports has been demonstrated to be acceptable without modification. Delay in RSS spray start will result in a reduction in diesel generator loading since the RSS pumps and the RHS pumps will no longer be running concurrently. The reduction in iodine removal efficiency during the delay period is more than offset by elimination of over-conservatisms in assumptions for long term iodine removal by the RSS system. The net impact is a reduction in the predicted offsite doses and control room doses following a design basis LOCA. Based on this discussion, the proposed amendment does not increase the probability or consequence of an accident previously evaluated.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed modification alters the RSS pump circuitry by initiating the start sequence with an existing RWST low-low level signal instead of a timer. The timer is now used to sequence pump starts. The pump function is not changed in any way. The proposed amendment does not introduce failure modes, accident initiators, or malfunctions that would cause a new or different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. The proposed change ensures that adequate margin to suction line flashing and NPSH margin exists for proper operation of the RSS pumps once the effects of debris are considered as required per GL 2004–02. Function of the pumps is not affected. Analyses have been performed that show the containment design basis limits are satisfied and the post-LOCA offsite and control room doses meet the required criteria. Therefore, based on the above, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: Darrell J. Roberts.

Duke Energy Corporation, et al., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina and Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 29, 2005.

Description of amendment request: The amendment would revise Technical Specification Bases Section 3.6.11, ''Air Return System (ARS),'' and the Updated Final Safety Analysis Reports (UFSAR), Section 6.2, ''Containment Systems,'' for McGuire Nuclear Station, Units 1 and 2 and Catawba Nuclear Station, Units 1 and 2. The licensee proposes to implement an additional manual operator action to respond to NRC Bulletin 2003–01, ''Potential Impact of Debris Blockage on Emergency Sump Recirculation at Pressurized-Water Reactors.'' This amendment would allow plant operators to manually start one air return fan at a containment pressure of 1 psig prior to the automatic 9 minutes (+ 1 minute) delayed start described in the UFSAR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The manual start of an Air Return System (ARS) fan will not result in a significant increase in the probability of an accident previously evaluated. The starting of an ARS fan is not considered to be an initiator of any accident or transient. This action is not taken during normal plant operation, but in response to an accident. The ARS fans do not operate to provide any normal ventilation requirement. The Containment Pressure Control System (CPCS) is provided to prevent excessive depressurization of the containment through inadvertent or excessive operation of certain engineered safety features. The CPCS prevents the

inadvertent actuation of an ARS fan during normal operation.

This change is being requested in order to mitigate the consequences of a small break loss of coolant accident (SBLOCA) and help prevent or delay reaching the initiation pressure setpoint for containment spray, thereby reducing associated problems with possible sump debris buildup. SBLOCA events are bounded by the consequences of a design basis large break [loss of coolant accident] LOCA as addressed in Section 15 of the McGuire and Catawba [Updated Final Safety Analysis Report] UFSARs. Accordingly, this amendment will not involve a significant increase in the consequences of an accident previously evaluated.

Second Standard

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The change proposed in this [license amendment request] LAR does not involve a physical alteration to the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing any normal plant operation. It does allow for the early start of one ARS fan during a SBLOCA event with containment pressure greater than 1 psig and less than 3 psig. This change will not affect or degrade the ability of the ARS to perform its specified safety functions.

Accidents of a different type are credible accidents that the proposed amendment could create that are not bounded by UFSAR evaluated accidents. This amendment allows for the manual start of an ARS fan following a SBLOCA within the containment. No new failure modes are introduced due to the manual start of an ARS fan. The circuit used to manually start an ARS fan does not interfere with the automatic signal to start an ARS fan. This change does not require any modifications to the control circuitry for the ARS. The starting of an ARS fan is not considered to be an initiator of any accident or transient. This action (starting of an ARS fan) is not taken during normal operation, but in response to an accident. Previous accidents considered incredible are not made more likely by this change. A human performance error, such as starting the ARS fan too early, too late, or not at all, would not result in a substantial difference in the calculated differential pressure across the divider deck. Since no new malfunctions of equipment with a different result are introduced, all effects of any malfunctions are bounded by those already evaluated in the UFSAR. Thus it is concluded that the change contained in this LAR will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

Does the proposed change involve a significant reduction in a margin of safety?

No. The early manual start of an ARS fan for SBLOCA events will not reduce the ability of this system to perform its design functions to assure the rapid return of air from the upper to the lower containment compartment after the initial blowdown following a Design Basis Accident (DBA). The return of this air to the lower compartment and subsequent recirculation back up through the ice condenser assists in cooling the containment atmosphere and limiting post accident pressure and temperature in containment to less than design values. Limiting pressure and temperature also reduces the release of fission product radioactivity from containment to the environment in the event of a DBA. Therefore, there are no adverse dose effects from the early start of the ARS fan or from the delay of containment spray based on the current licensing basis.

Analyses have shown that there will be no fan or damper malfunction due to the early manual start of a fan. The other functions of the system are not affected by the change proposed in this LAR. The manual start of the ARS during a SBLOCA will help maintain the margin of safety by forcing air and steam through the ice condenser with a subsequent reduction in the rate of pressure increase in the containment, and a delay in reaching the actuation setpoint for the containment spray system. The containment spray system will continue to be initiated at the normal setpoint pressure of the system (-3 psig). Therefore, the proposed changes listed above do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Evangelos C. Marinos.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 17, 2005.

Description of amendment request: The proposed changes will revise the Operating License Condition 2.C.(41), Fire Protection Program, to add a reference to the Nuclear Regulatory Commission (NRC) safety evaluation that allows the application of National Fire Protection Agency risk-informed, performance based fire protection methods and tools that have been approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed activity involves the use of a risk-informed, performance-based method to identify those circuits where a single fire could damage more than one safe shutdown train. These circuits would then be provided with one hour rated fire wrap. With the exception of the fire wrap itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis. As a result, the proposed activity does not introduce any new accident initiators. In addition, fires are not an accident that is previously evaluated in Chapter 15. Regardless, the proposed activity does not change the probability of a fire occurring since fire ignition frequency is independent of the presence of the fire wrap. The consequences of the proposed activity are bounded by the fire safe shutdown analysis, which assumes one train is free of fire damage.

Therefore, providing one hour rated fire wrap for those circuits where a single fire could damage more than one safe shutdown train does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed activity involves the use of a risk-informed, performance-based method to identify those circuits where a single fire could damage more than one safe shutdown train. These circuits would then be provided with one hour rated fire wrap. With the exception of the fire wrap itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis. As a result, the proposed activity does not introduce nor increase the number of failure mechanisms of a new or different type than those previously evaluated. The fire safe shutdown analysis assumes one train is maintained free of fire damage.

Therefore, providing one hour rated fire wrap for those circuits where a single fire could damage more than one safe shutdown train does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed activity involves the use of a risk-informed, performance-based method to identify those circuits where a single fire could damage more than one safe shutdown train. These circuits would then be provided with one hour rated fire wrap. With the exception of the fire wrap itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis.

The proposed activity does not impact plant safety since the conclusions of the fire safe shutdown analysis remain unchanged.

Therefore, providing one hour rated fire wrap for those circuits where a single fire could damage more than one safe shutdown train does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Section Chief: David Terao.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 21, 2005.

Description of amendment request: The amendment proposes to replace the existing steam generator tube surveillance program with that being proposed by the Technical Specification Task Force (TSTF) in TSTF 449, Revision 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change requires a Steam Generator Program that includes performance criteria that will provide reasonable assurance that the steam generator (SG) tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational leakage.

The structural integrity performance criterion is:

Structural integrity performance criterion: All in-service steam generator tubes shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, and cool down and all anticipated transients included in the design specification) and design basis accidents. This includes retaining a safety factor of 3.0 against burst under normal steady state full power operation primary to secondary pressure differential and a safety factor of 1.4 against burst applied to the design basis accident primary to secondary pressure differentials. Apart from the above requirements, additional loading conditions associated with the design basis accidents, or combination of accidents in accordance with the design and licensing basis, shall also be evaluated to determine if the associated loads contribute significantly to burst or collapse. In the assessment of tube integrity, those loads that do significantly affect burst or collapse shall be determined and assessed in combination with the loads due to pressure with a safety factor of 1.2 on the combined primary loads and 1.0 on axial secondary loads.

The accident induced leakage performance criterion is: The primary to secondary accident induced leakage rate for any design basis accidents, other than a SG tube rupture, shall not exceed the leakage rate assumed in the accident analysis in terms of total leakage rate for all SGs and leakage rate for an individual SG. Leakage is not to exceed 540 gallons per day through any one SG, except for specific types of degradation at specific locations as described in paragraph c of the Steam Generator Program.

The operational leakage performance criterion is: The RCS operational primary to secondary leakage through any one SG shall be limited to ≤ 75 gallons per day per SG.

A steam generator tube rupture (SGTR) event is one of the design basis accidents that is analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary leakage rate equal to the leakage rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as main steam line break (MSLB), control element assembly (CEA) ejection, and reactor coolant pump seized rotor/sheared shaft, the tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). The accident induced leakage criterion introduced by the proposed changes account for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of

the Steam Generator Program required by the proposed change. The program, defined by NEI [Nuclear Energy Institute] 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring.

The consequences of design basis accidents are, in part, functions of the Specific Activity in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for Specific Activity in primary coolant to ensure the plant is operated within its analyzed condition. For those analyzed events that do not result in faulted steam generators, greater than or equal to 75 gpd [gallons per day] primary to secondary leakage per steam generator is assumed in the analysis. For those analyzed events that result in a faulted steam generator (*e.g.*, MSLB), 540 gpd primary to secondary leakage is assumed though the faulted steam generator while greater than or equal to 75 gpd primary to secondary leakage is assumed though the intact steam generator.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current technical specifications and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current Technical Specifications.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of other design basis events.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No. The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications.

Implementation of the proposed Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the Steam Generator Program will be an enhancement of SG tube performance. Primary to secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component.

The change enhances SG inspection requirements. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the Steam Generator Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the Steam Generator Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn 1700 K Street, NW., Washington, DC 20006–3817.

NRC Section Chief: David Terao.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: July 21, 2005.

Description of amendment request: The requested change will delete Technical Specification (TS) 6.9.1.2 related to Occupational Radiation Exposure Reports and TS 6.9.1.5, ''Monthly Operating Reports.''

Basis for proposed no significant hazards consideration determination: The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated July 21, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating letter report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significance hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Michael L. Marshall, Jr.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: September 1, 2005.

Description of amendment request: The requested change will delete Technical Specification (TS) 6.9.1.2 related to Occupational Radiation Exposure Reports and TS 6.9.1.6, ''Monthly Operating Reports.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Michael L. Marshall, Jr.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 21, 2005.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) testing frequency for the surveillance requirement (SR) in TS 3.1.4, ''Control Rod Scram Times.'' Specifically, the proposed change would revise the frequency for SR 3.1.4.2, control rod scram time testing, from ''120 days cumulative operation in MODE 1'' to ''200 days cumulative operation in MODE 1.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in licensing amendment applications in the **Federal Register** on August 23, 2004 (69 FR 51864). The licensee affirmed the applicability of the model NSHC determination in its application dated July 21, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: David Terao.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 12, 2004, as supplemented by letters dated September 2 and September 16, 2005.

Description of amendment request: The proposed amendments would revise Technical Specifications 3.1.7, ''Standby Liquid Control (SLC) System,'' for Hatch, Units 1 and 2. The proposed amendments would update Figures 3.1.7–1 and 3.1.7–2 for Units 1 and 2 TS to reflect the increased concentration of Boron-10 in the solution. Conforming revisions to Bases B 3.1.7, ''Standby Liquid Control (SLC) System'' are also included.

The proposed amendment was previously noticed on February 1, 2005 (70 FR 5249).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This is a proposed change to Figures 3.1.7–1 and 3.1.7–2 of the Units 1 and 2 TS [Technical Specifications]. Figure 3.1.7–1 is a plot of the weight percent of Sodium Pentaborate solution in the Standby Liquid Control (SLC) Tank, as a function of the gross volume of solution in the tank. Figure 3.1.7–2 is a plot of the Sodium Pentaborate temperature versus concentration requirements.

Figure 3.1.7–1 is proposed to be changed in order to accommodate an injection of Sodium Pentaborate solution into the reactor, following an ATWS [anticipated transient without scram] event, such that the concentration of Boron-10 atoms in the reactor will be 800 ppm natural Boron equivalent. This is necessary to accommodate increased cycle energy requirements for the Hatch Units 1 and 2 cores. Both Figures 3.1.7–1 and 3.1.7–2 are changed to reflect that the boundary between Region A and B is changing from 6.9% to 7.0%. The proposed change to the Figures will not increase the probability of an ATWS event because the curves have nothing to do with the prevention of an ATWS event. The new requirements will insure that, in the future, the core will have adequate shutdown margin to mitigate the consequences of an ATWS event.

The minimum concentration of Sodium Pentaborate which also represents the boundary between Region A and Region B, is changing from 6.9% to 7.0%. This increase in the concentration ensures a conservative margin to the ATWS equivalency determination required by 10 CFR 50.62.

Also, no systems or components designed to ensure the safe shutdown of the reactor are being physically changed as a result of this proposed TS change. In fact, no safety related systems or components designed for the prevention of previously evaluated events are being altered by the amendment.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

This proposed TS revision results in a change to SLC TS Figures 3.1.7–1 and 3.1.7–2 requirements. However, these changes do not result in physical changes to the SLC system. SLC pump operation, maintenance and testing remain the same. Accordingly, no changes to the operation, maintenance or surveillance procedures will result from this TS revision request. Therefore, no new modes of operation are introduced by this TS change.

Since no new modes of operation are introduced, the proposed change does not create the possibility of a new or different type event from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

This proposed TS change is being made to increase the boron concentration requirements of the sodium pentaborate solution injected into the reactor vessel following an Anticipated Transient Without Scram (ATWS) event. The change is necessary due to new fuel designs and higher energy requirements for fuel cycles. Therefore, the change is being made to insure that shutdown requirements can be met for the ATWS event. This will insure the margin of safety with respect to ATWS will continue to be met.

The increase in the minimum concentration from 6.9% to 7.0% ensures a conservative margin with respect to the ATWS equivalency determination. Consequently, this proposed TS change will not result in a decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Evangelos C. Marinos.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: September 1, 2005 (TS–05–04).

Description of amendment request: The proposed amendment would revise the reactor protection system turbine trip allowable value for low trip system pressure from greater than or equal to 43 pounds per square inch gauge (psig) to 39.5 psig. This change would allow the instrumentation that performs this trip function to be tested and verified to be operable within the capabilities of the pressure switches.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change revises the allowable value for reactor trip as a result of a turbine trip on low trip system pressure. This change will not alter any plant components, systems, or processes and will only provide a more appropriate value to assess operability of the associated pressure switches. Since the plant features and operating practices are not altered, the possibility of an accident is not affected. This reactor trip is not directly credited in SQN's accident analysis and is maintained as an anticipatory trip to enhance the overall reliability of the reactor trip system. As such, there is not a specific safety limit associated with this function and the generation of a reactor trip based on low trip system pressure is above the required actuations to ensure acceptable mitigation of accidents. As the proposed change will continue to provide an acceptable anticipatory trip signal, the offsite dose potential is not affected by this change. Therefore, the proposed change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. As described above, this change will not alter any plant equipment or operating practices that have the ability to create a new potential for accident generation. The proposed change revises the operability limits for a function that generates a trip signal when appropriate conditions exist to require accident mitigation response. This type of function does not have the ability to create an accident as its purpose and function is to mitigate events. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change will revise an allowable value for a reactor trip initiator that results from a turbine trip condition. This change will not alter the setpoint, and the calibration of the associated pressure switches will continue to be set at the current values. The allowable value change is in response to accuracy aspects of the instrumentation and does not alter the ability of this trip function to operate when and as needed to mitigate accident conditions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: August 26, 2005.

Description of amendment request: The amendment would authorize changes to the Updated Safety Analysis Report (USAR) for Wolf Creek Generating Station (WCGS) that would revise the methodology for the reactor coolant system (RCS) leak detection instrumentation. This revision would clarify the requirements of the containment atmosphere gaseous radioactivity monitor with regard to the RCS leak detection capability and would justify that the monitor can be considered operable in compliance with Limiting Condition for Operation 3.4.15, in Technical Specification (TS) 3.4.15, ''RCS Leakage Detection Instrumentation,'' during all applicable Modes. There are no proposed changes to the WCGS TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change has been evaluated and determined to not increase the probability or consequences of an accident previously evaluated. The proposed change does not make hardware changes and does not alter the configuration of any plant system, structure, or component (SSC). The proposed change only clarifies the design and OPERABILITY requirements for the containment atmosphere gaseous radioactivity monitors and identifies the capabilities of the monitors at low RCS [radio]activity levels. The containment atmosphere gaseous radioactivity monitors are not initiators of any accident; therefore, the probability of occurrence of an accident is not increased. The USAR and TSs will continue to require diverse means of [RCS] leakage detection equipment, thus ensuring that leakage due to cracks [in the RCS] would continue to be identified prior to propagating to the point of a[n] [RCS] pipe break. Therefore, the consequences of an accident [previously evaluated] are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing basis [for WCGS]. The proposed change does not affect any SSC associated with an accident initiator. Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not alter any RCS leakage detection components. The proposed change only clarifies the design and operability requirements for the containment atmosphere gaseous radioactivity monitor and identifies the capabilities of the containment atmosphere gaseous radioactivity monitors at low RCS [radio]activity levels. This change is required since the level of radioactivity in the WCGS reactor coolant has become much lower than what was assumed in the USAR and the gaseous channel [(monitor)] can no longer promptly detect a small RCS leak under all operating conditions. The proposed amendment continues to require diverse means of [RCS] leakage detection equipment with [the] capability to promptly detect RCS leakage. Although not required by [the] TS[s], additional diverse means of leakage detection capability are available as described in the USAR Section 5.2.5. Early detection of [RCS] leakage, as the potential indicator of a crack(s) in the RCS pressure boundary, will thus continue to be in place so that such a condition is known and appropriate actions [are] taken well before any such crack would propagate to a more severe condition. Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Daniel S. Collins, Acting.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act

of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: October 20, 2004, as supplemented by letters dated June 30, July 29, August 17, and September 19, 2005.

Brief description of amendment: The amendment revised the Technical Specifications to (1) eliminate the existing requirement in Section 3.8.6 regarding maintaining the containment equipment hatch cover in place with a minimum of four bolts during fuel loading and refueling operations, and (2) revise or introduce commitments to the Technical Specifications Bases in support of the change in Section 3.8.6.

Date of issuance: October 13, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 257.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 7, 2004 (69 FR 70714) The supplements dated June 30, July 29, August 17, and September 19, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 2005.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: May 28, 2003, as supplemented by letters dated January 22 and June 23, 2004, and February 2 and September 27, 2005.

Brief description of amendments: The amendments revise several surveillance requirements (SRs) in Technical Specification (TS) 3.8.1 on alternating current power sources and SR 3.8.4.6 for direct current power sources for plant operation. The revised SRs have notes deleted or modified to adopt in part the staff-approved TS Task Force 283, Revision 3, to allow these SRs to be performed, or partially performed, in reactor modes that previously were not allowed by the TSs.

Date of issuance: September 29, 2005.

Effective date: September 29, 2005, and shall be implemented within 90 days of the date of issuance including the incorporation of the changes to the TS Bases for TS 3.8.1 and SR 3.8.4.6 as described in the licensee's letters dated May 28, 2003, January 22 and June 23, 2004, and February 2 and September 27, 2005.

Amendment Nos.: Unit 1—156, Unit 2—156, Unit 3—156.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 8, 2003 (68 FR 40709).

The supplemental letters dated January 22, June 23, 2004, and February 2 and September 27, 2005, do not expand the scope of the application as originally noticed and do not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2005.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: February 3, 2005.

Brief description of amendment: The amendment modified Technical Specification (TS) 6.16.b.1, ''Radioactive Effluent Controls Program,'' and TS 6.18, ''Off-site Dose Calculation Manual (ODCM),'' to be consistent with Title 10 of the *Code of Federal Regulations* (10 CFR) part 20 and NUREG–1431, ''Standard Technical Specifications Westinghouse Plants.''

Date of issuance: October 4, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 186.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 29, 2005 (70 FR 15944).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 25, 2002, as supplemented by letters dated November 13 and December 16, 2003, September 22, 2004, April 6, June 14, July 8, August 17, and September 8 and September 19, 2005.

Brief description of amendments: The amendments include a full-scope implementation of an alternative source term for evaluating the consequences of design basis accidents at Catawba Nuclear Station. The amendments also revised the Technical Specifications for the Ventilation Filter Testing Program, Annulus Ventilation System, Auxiliary Building Filtered Ventilation Exhaust

System, Fuel Handling Ventilation Exhaust System, and Control Room Area Ventilation System, and containment penetrations.

Date of issuance: September 30, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 227 and 222.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 15, 2003 (68 FR 18272). This application was renoticed on May 24, 2005 (70 FR 29789).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 2005.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: April 19, 2005.

Brief description of amendment: The amendment revised technical specifications (TSs) testing frequency for the surveillance requirement (SR) in TS 3.1.4, ''Control Rod Scram Times.'' Specifically, the change revised the frequency for SR 3.1.4.2, ''Control Rod Scram Time Testing,'' from ''120 days cumulative operation in MODE 1'' to ''200 days cumulative operation in MODE 1.''

Date of issuance: September 29, 2005.

Effective date: September 29, 2005, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 194.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** June 7, 2005 (70 FR 33212).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2005.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 17, 2004, as supplemented by letters dated June 29, and August 12, 2005.

Brief description of amendment: The amendment revises the Technical Specification (TS) requirements for direct current (DC) sources. The current TS only includes ACTION Statements for an inoperable DC Power subsystems. The change adds a new ACTION Statement to TS 3.8.4, ''DC Sources—Operating,'' to specifically address an inoperable battery charger.

Date of issuance: October 7, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 148.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** January 4, 2005 (70 FR 401). The supplements dated June 29, and August 12, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: December 20, 2004, as supplemented by letter dated April 26, 2005.

Brief description of amendment: The amendment changed the existing containment structures and tendon inservice inspection requirements to be consistent with NUREG–1432, Revision 3, and the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section XI. Specifically, the amendment modified the Surveillance Requirement of Technical Specification (TS) 3.6.1.5, added a new Surveillance Program to TS 6.5.6 and a report to TS 6.5.7, and made two administrative changes to the TSs.

Date of issuance: September 29, 2005.

Effective date: As of the date of issuance to be implemented within 90 days from the date of issuance.

Amendment No.: 262.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** March 29, 2005 (70 FR 15943).

The supplement dated April 26, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2005.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 21, 2004, as supplemented by letters dated March 18, April 7, May 6, August 10, and September 19, 2005.

Brief description of amendments: The amendments extended the outage times from 72 hours to 14 days for an inoperable emergency diesel generator. It also changed formats of the affected technical specification pages to improve their appearance but not alter any requirements.

Date of issuance: September 30, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 291, 273.

Facility Operating License Nos. DPR–58 and DPR–74: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 26, 2004 (69 FR 62476). The supplements provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 30, 2004, as supplemented by letters dated September 16, 2004, November 5, 2004, March 3, 2005, July 1, 2005, and September 27, 2005.

Brief description of amendment: The amendment changed the TSs to support an increase in the length of the fuel cycle from 18 to 24 months at Monticello. In addition, the proposed amendment requested changes in calibration times of various instruments. These changes will be evaluated in a separate license amendment.

Date of issuance: September 30, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 143.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** January 18, 2005 (70 FR 2892). The supplements dated September 16, 2004, November 5, 2004, March 3, 2005, July 1, 2005, and September 27, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on January 18, 2005 (70 FR 2892).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2005.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 23, 2004, as supplemented by letter dated July 8, 2005.

Brief description of amendment: The amendment (1) revised the descriptive wording of Technical Specifications (TSs) Table 1–1, ''RPS [reactor protection system] Limiting Safety System Settings,'' for the reactor trip setpoint for low steam generator water level to relocate unnecessary detail, and (2) converted TSs Section 4.0, ''Design Features,'' to the format and content of NUREG–1432, Revision 3, ''Standard Technical Specifications for Combustion Engineering Plants.''

Date of issuance: October 3, 2005.

Effective date: October 3, 2005, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 236.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** May 24, 2005 (70 FR 29798).

The July 8, 2005, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated October 3, 2005.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of application for amendments: September 8, 2004, as supplemented by letters dated July 8 and September 28, 2005.

Brief description of amendments: The amendments changed SSES 1 and 2 Technical Specifications 3.6.4.1, ''Secondary Containment,'' and 3.6.4.3, ''Standby Gas Treatment System (SGTS),'' to extend, on a one-time basis, the allowable completion time for required actions for secondary containment inoperable and two SGTS subsystems inoperable, in mode 1, 2, or 3, from 4 hours to 48 hours.

Date of issuance: October 6, 2005.

Effective date: October 6, 2005.

Amendment Nos.: 226 and 203.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** March 1, 2005 (70 FR 9994). The supplements dated July 8 and September 28, 2005, contained clarifying information and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 2005.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 15, 2004, as supplemented by letters dated August 11, 2004, and August 11, 2005. The August 11, 2005, supplement withdrew a portion of the original application from consideration.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.6.2.3 Action B, for both units, to correct a non-conservative action statement.

Date of issuance: September 30, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 266 and 248.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs.

*Date of initial notice in **Federal Register:*** October 12, 2004 (69 FR 60684). The licensee's supplement dated August 11, 2005, withdrew a portion of the original application from consideration and did not increase the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 2005.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: March 24, 2005.

Brief description of amendments: The proposed changes revised various Technical Specifications (TSs) related to cycle-specific values and the shutdown margin, and are consistent with the following Nuclear Regulatory Commission approved Technical Specification Task Force (TSTF) Standard TS Change Travelers: TSTF–9–A, Revision 1, ''Relocate Value for Shutdown Margin to COLR;'' TSTF–67–A, Revision 0, ''Correction of Shutdown Margin Definition;'' TSTF–142–A, Revision 0, ''Increase the Completion Time When the Core Reactivity Balance is Not Within Limit;'' and TSTF–150–A, Revision 0, ''Replace DNBR Power Decrease Number with Reference to the COLR.''

Date of issuance: October 3, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 200/191.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** May 10, 2005 (70 FR 24656).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 3, 2005.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 4, 2005.

Brief description of amendments: The amendments change Technical Specification 4.0.5 to add a reference to the NRC-approved exemption of selected pumps, valves, and other components from special treatment requirements. As an editorial change, references to Title 10, *Code of Federal Regulations* (10 CFR) part 50, section

50.55a(f) and 10 CFR part 50, section 50.55a(f)(6)(I) is added to the paragraph for inservice testing, similar to the existing references for inservice inspection. In addition, ''inservice testing'' and ''inservice inspection'' are reordered for consistency with the sequence of the regulations in 10 CFR 50.55a.

Date of issuance: October 4, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1—173; Unit 2—161.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 2, 2005 (70 FR 44403).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2005.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: September 9, 2004.

Brief description of amendments: The Amendments revised the Technical Specification 3.6.6.8 to change the current interval for surveillance from every 10 years to verification that the nozzles are unobstructed following a maintenance that could have resulted in nozzle blockage.

Date of issuance: September 23, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 120 and 120.

Facility Operating License Nos. NPF–87 and NPF–89: The Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 26, 2004 (69 FR 62478).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 2005.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 17, 2004, as supplemented by letters dated February 11, May 26, June 17 (two letters), July 15, July 29, August 16, and September 6, 2005.

Brief description of amendment: The amendment supports the installation of replacement steam generators (SGs) at Callaway during the refueling outage in the fall of 2005. The amendment affects the following affected TSs: the reactor core safety limits (TS 2.1.1), reactor trip system and engineered safety feature actuation system instrumentation (TSs 3.3.1 and 3.3.2), reactor coolant system (RCS) limits (TS 3.4.1), RCS loops (TSs 3.4.5, 3.4.6, and 3.4.7), RCS operational leakage (TS 3.4.13), SG tube integrity (the new TS 3.4.17), main steam safety valves (TS 3.7.1), SG tube surveillance program (TS 5.5.9), containment integrated leakage rate testing program (TS 5.5.16), and SG tube inspection report (TS 5.6.10).

Date of issuance: September 29, 2005.

Effective date: Effective on the date of issuance, and shall be implemented before entry into Mode 5 during the restart from the fall 2005 refueling outage when the replacement steam generators are installed including (1) revising the pressure temperature limits report to change the cold overpressure mitigation system setpoints to reflect no reactor coolant pump operation restrictions and (2) incorporating the TS Bases changes identified in the licensee's letter of September 6, 2005, into the TS Bases.

Amendment No.: 168.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** November 23, 2004 (69 FR 68185). The supplemental letters dated February 11, May 26, June 17 (two letters), July 15, July 29, August 16, and September 6, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed and did not change the NRC staff's original proposed no significant hazards consideration determination published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

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 applications.

2. *Environmental:* primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous:* does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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–

[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 applicant's counsel and discuss the need for a protective order.

0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 31, 2005, as supplemented by letter dated September 13, 2005.

Brief description of amendment: The amendment permitted a one-time change to Technical Specification Table 3.3.8.1–1 to provide a one-time relaxation of the Loss of Power instrumentation requirements.

Date of issuance: September 15, 2005.

Effective date: As of the date of issuance to be implemented immediately.

Amendment No.: 147.

Facility Operating License No. NPF–47: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes.

The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed no significant hazards consideration be provided to the NRC staff by the close of business on September 9, 2005. The notice was published in The St. Francisville Democrat (in St. Francisville) on September 8, 2005, and The Advocate (in Baton Rouge) on September 7, 2005. No public comments were received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Louisiana, and final no significant hazards consideration determination are contained in a Safety Evaluation dated September 15, 2005.

XU Generation Company LP, Docket No. 50–445, Comanche Peak Steam Electric Station, Unit No. 1, Somervell County, Texas

Date of amendment request: April 27, 2005 as supplemented by letter dated July 20, 2005.

Description of amendment: The amendments revise the Technical Specifications to add the topical report WCAP–13060–P–A to the list of NRC approved methodologies to be used at Comanche Peak Steam Electric Station, Unit 1.

Date of issuance: October 11, 2005.

Effective date: As of the date of issuance and shall be implemented immediately.

Amendment No.: 123.

Facility Operating License No. NPF–87: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes.

The notice published on September 26, 2005 (70 FR 56191) provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing within 60 days from the date of publication, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated October 11, 2005.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: David Terao.

Dated at Rockville, Maryland, this 17th day of October, 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–21180 Filed 10–24–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 24, 2005:

A Closed Meeting will be held on Thursday, October 27, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session and that no earlier notice thereof was possible.

The subject matters of the Closed Meeting scheduled for Thursday, October 27, 2005 will be:

Formal orders of private investigations;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and
Opinions.

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 20, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–21355 Filed 10–21–05; 11:26 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52630; File No. SR–Amex–2005–097]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Amex Listing Agreement

October 18, 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 29, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a modified Amex Listing Agreement for the purpose of (i) combining the two forms of Amex Listing Agreements presently available into one form of Amex Listing Agreement to be submitted to the Exchange by all issuers in connection with a listing application; (ii) eliminating a representation by issuers of structured products, exchange-traded funds, trust issued receipts and other novel securities products regarding third party claims; and (iii) making certain minor, non-substantive changes to the Amex Listing Agreement.

The text of the proposed rule change is available on the Amex's Web site, *http://www.amex.com*, at the Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

To list on the Exchange, an issuer must execute an Amex Listing Agreement in connection with its listing application. The Exchange currently has two forms of Amex Listing Agreements: (i) A listing agreement for securities listed pursuant to sections 106 (Currency and Index Warrants) and 107 (Other Securities) of the Amex Company Guide and pursuant to Amex Rules 1000 (Portfolio Depositary Receipts), 1000A (Index Fund Shares) and 1200 (Trust Issued Receipts) (the ''Other Securities Listing Agreement'') and (ii) a listing agreement for all other securities (the ''Basic Securities Listing Agreement''). The Exchange proposes to consolidate the two forms of Amex Listing Agreements into one form for issuers of all types of securities.

The Other Securities Listing Agreement and Basic Securities Listing Agreement differ in only one respect: In paragraph (4) of the Other Securities Listing Agreement (''Paragraph (4)''), issuers represent that they will not implead, cross-claim against or sue the Exchange or its affiliates as a result of third party claims against the issuer. The Exchange created the Other Securities Listing Agreement in 2002[3] to address concerns about the Exchange's potential legal exposure, particularly in the area of intellectual property rights associated with exchange-traded funds, HOLDRs and other structured products. The adoption of Paragraph (4) reflected the position that, even though the Exchange's sole involvement with any particular product is that it approved the product for listing and that the securities trade on the Exchange, it was foreseeable that litigation relating to the products could include the Exchange as a defendant and that the inclusion of Paragraph (4) in the listing agreement might reduce the Exchange's legal exposure and litigation in some circumstances.

The Exchange now proposes to delete Paragraph (4) from the Amex Listing Agreement. The Exchange believes that none of the listing agreement forms provided by other exchanges contain a provision similar to Paragraph (4). The Exchange believes that modification of the Amex Listing Agreement to more closely resemble the listing agreements provided by other exchanges will promote fair competition between exchange markets and benefit issuers of exchange-traded funds and other structured products by simplifying their responsibilities and obligations in connection with the listing process.

The Exchange is also proposing other minor changes to the Amex Listing Agreement, to clarify existing provisions about which issuers have raised questions.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46451 (September 10, 2002), 67 FR 57468 (September 3, 2002) (SR–Amex–2002–46).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

(ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–2005–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–097. 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–Amex–2005–097 and should be submitted on or before November 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5892 Filed 10–24–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52632; File No. SR–CHX–2005–21]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Requiring the Chicago Stock Exchange's Participants To Provide Electronic Mail Addresses to the Exchange

October 19, 2005.

Introduction

On July 18, 2005, 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 require participants and participant firms to provide electronic mail addresses to the Exchange for use in transmitting notices and other communications. On August 30, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 1, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published in the **Federal Register** on September 14, 2005.[5] No comments were received on the proposed rule change. This order approves the proposed rule change, as amended.

New Rule 17 of Article III shall provide that every Exchange participant and Exchange participant firm shall designate one or more electronic mail addresses for the purpose of receiving Exchange notices and communications and shall promptly update those electronic mail addresses when those addresses change or are no longer valid. New Rule 17 also provides that an authorized representative of the Exchange may elect to transmit notices or other communications to participants electronically, but that nothing in Rule 17 will supersede or modify either the method for service of process or other materials in any disciplinary proceeding or any other provisions of the Exchange rules setting out a specific method for the receipt of information from the Exchange.

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest, by allowing the Exchange to take advantage of technology to communicate with participants in a more efficient and cost-effective manner.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–2005–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5880 Filed 10–24–05; 8:45 am]

BILLING CODE 8010–01–P

---

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1. In Amendment No. 1, the Exchange made several modifications to the proposed rule change, including changes to the proposed rule text to require members to promptly update electronic mail addresses they provide to the Exchange, to clarify that the proposal will not supersede or modify any other provisions of Exchange rules that set out a specific method for the receipt of information from the Exchange, and to modify the notice to more closely conform it to the text of the proposed rule change.

[4] *See* Amendment No. 2. In Amendment No. 2, the Exchange changed the text of the proposed rule so that it uses the term ''electronic mail'' instead of the term ''e-mail.''

[5] *See* Securities Exchange Act Release No. 52375 (September 1, 2005), 70 FR 54424.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78(f)(b).

[8] 5 U.S.C. 78(f)(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52640; File No. SR–NYSE–2004–51]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule and Amendment No. 1 Thereto Relating to a Proposed Interpretation to Rule 342 (Offices—Approval, Supervision, and Control)

October 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 2004, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 28, 2005, the Exchange filed Amendment No. 1 to the proposed rule change, replacing the original filing in its entirety. 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 NYSE is filing with the Commission a proposed Interpretation of Exchange Rule 342 (Offices—Approval, Supervision, and Control) to permit the waiver of the qualified resident branch office manager requirement for ''limited purpose offices'' with more than three registered representatives. The text of the proposed rule change is available on the NYSE Web site (*http://www.nyse.com/pdfs/NYSE-2004–51_A-1.pdf*), at the principal office of the NYSE, and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Synopsis

The Exchange proposes amendments to NYSE Rule 342 that would permit members and member organizations to seek a waiver of the qualified (Series 9/10—General Sales Supervisor, Options/General or Series 24—General Securities Principal (after July 1, 2001) examinations) resident branch office manager requirement for ''Limited Purpose Offices'' with more than three registered representatives (''RRs''). ''Limited Purpose Office'' is a proposed new category that would include branch office locations with RRs that conduct limited business activities, or that have limited registration qualifications (*e.g.*, Series 6—Investment Company and Variable Contracts Products Representative or Series 52—Municipal Securities Representative). The proposed rule change sets forth a process by which members and member organizations may seek a waiver from the Exchange of the on-site branch office manager requirement on a case-by-case basis, following prescribed criteria as set forth in the proposed Interpretation.

Background

Currently, except for ''small offices,'' all member and member organization branch offices are required to have an on-site qualified manager. The Interpretation of NYSE Rule 342.15 limits a small office to a total of three RRs. If an office has three or fewer RRs, the office is not required to have a qualified branch office manager on-site. Instead, the small office must be under the close supervision and control of the main office or other designated branch office that has a qualified branch office manager on-site. In addition, supervision and control procedures must be made part of the member's or member organization's written plan of supervision. Recently, member organizations with branch offices that have a limited scope of activities, but that don't meet the definition of ''small office'' under the Interpretation, have approached the Exchange seeking relief from the requirement that such offices have a qualified branch office manager on-site.

As members and member organizations have been faced with ever changing demographics of their workforce, as well as with evolving regulatory and market environments, many have responded by fundamentally altering the ways in which their business is conducted. For example, there has been a large increase in the number of small, multi-function offices that offer a combination of services related not only to securities brokerage, but also to banking and insurance products. Concurrently, advances in technology have resulted in increasingly sophisticated surveillance capabilities that enable members and member organizations to more effectively supervise and control the business activities of their associated persons in such offices from remote locations, such as another branch office or a firm's main office.

Given these surveillance and monitoring capabilities, and the often-limited scope of securities-related business activities conducted in many offices, the requirement to have an on-site qualified branch office manager may often be neither practical nor necessary. Consequently, the Exchange has re-examined its ''four-or-more'' standard for requiring on-site supervision, and considered whether alternate criteria, such as limited securities sales activity coupled with proper risk-based supervisory controls and follow-up, should be determining factors for granting regulatory relief currently available only to small offices.[3]

Prior to the adoption of the Gramm-Leach-Bliley Act (the ''GLBA''),[4] banks were completely exempted from the definition of the terms ''broker'' and ''dealer'' under the Exchange Act.[5] The GLBA amended the definition of these terms and replaced the full exception with functional exceptions. Thus, under the current terms of the Exchange Act, banks must either limit their securities activities to those that fit within the functional exceptions, or conduct those activities through a registered broker-dealer. As a result, many banks with affiliated broker-dealers have entered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–NYSE–2002–34 (Definition of Branch Office). The Exchange has taken a similar risk-based approach in its definition of branch office and the exceptions to that definition for remote locations.

[4] Pub. L. 106–102, 113 Stat. 1338 (1999). The GLBA lowered barriers between the banking and securities industries erected by the Banking Act of 1933 (known as the Glass-Steagall Act) Pub. L. 73–66, ch. 89, 48 Stat. 162 (1933) (codified in various sections of 12 U.S.C.).

[5] 15 U.S.C. 78a *et seq.* (Before the GLBA, Exchange Act Section 3(a)(4) defined the term ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank. Before the GLBA, Exchange Act Section 3(a)(5) defined the term ''dealer'' as ''any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank * * *'')

into business arrangements with those broker-dealers to ensure that non-excepted ''broker'' or ''dealer'' activities are properly conducted.

One common practice is for the two entities to ''dually employ'' those bank personnel acting in a broker or dealer capacity with both the bank and the registered broker-dealer. This enables banking personnel to register and qualify for securities license exam qualifications, such as the Series 6 (Investment Company and Variable Contracts Products Representative), the Series 7 (General Securities Registered Representative) and the Series 66 (Uniform Combined State Law), in order to conduct broker and dealer activities on behalf of the registered broker-dealer affiliate. Other broker-dealer alliances, primarily with insurance companies and investment companies, have also engaged in similar business arrangements involving dual employment and referrals among various registered entities.

Because the dually employed persons often primarily conduct business (*e.g.*, banking, insurance, mutual funds) other than broker or dealer activities, they typically physically remain on bank, insurance company, or investment company premises. However, because they are employees of the registered broker-dealer as well, the office is considered a branch office pursuant to NYSE Rule 342. If it is a branch office with more than three RRs, it is required to have a qualified branch office manager on-site. As noted above, the Interpretation of NYSE Rule 342 currently exempts only small offices—defined as offices with three or fewer RRs—from the on-site qualified branch office manager requirement.

This does not offer much flexibility to shared, multi-function broker-dealer offices that have more than three RRs but don't offer a full line of securities products and services. Often, offering a limited selection of securities products is an accommodation to the bank's, insurance company's or investment company's customers, and these products are complementary to such entities' traditional activities. In fact, many broker-dealer business models are becoming more reliant on offices of more than three RRs servicing geographically isolated locations with an abbreviated securities product/services menu. Because of the limited scope of securities-related business conducted in these offices, members and member organizations often have the technological capability to adequately supervise and control them without having a qualified branch office manager on-site.

Supervision

Pursuant to NYSE Rule 342, all offices of members and member organizations must be subject to an effective system of supervision and control. As broker-dealers have incorporated technological advancements into their business activities, they have been able to make greater use of electronic means to enhance overall supervision and control. For instance, firms have enacted policies and procedures that require their RRs to communicate through internal e-mail systems, which are used by supervisors and firms for monitoring and surveillance purposes. Centralized communication networks are likewise used to monitor the trading and handling of funds in customer accounts serviced in branch offices. All such activities are generally transacted through a broker-dealer's internal order management system, which feeds surveillance systems and exception reports.

The reports these systems can provide monitor activities as diverse as registration and continuing education status; daily trade review; new accounts review and approval; errors and corrections; employee trade and monthly statement review; outside business activity; selling away; customer address changes; customer complaints; blue sky monitoring; cancel and rebills; fund switch exceptions; missing documentation; various risk and product limits; and correspondence review and approval. With regard to correspondence, broker-dealers have utilized a variety of systems to organize electronic correspondence, such as e-mail, so that it can be monitored and reviewed in a timely manner. In addition, these systems have enabled firms to index, store and search e-mails for investigative and surveillance purposes.

Proposal

Given that the development of technologically sophisticated systems has automated and enhanced so many aspects of the supervisory process and expanded the range of supervisory functions that can be conducted remotely, the Exchange believes more flexibility and discretion is needed to determine whether a qualified on-site branch office manager is necessary for offices with more than three RRs if only a limited range of securities-related services is offered, or if a limited level of such activity is conducted. The proposed Interpretation would address this need. Further, it would give increased flexibility to member organizations that acquire new offices through merger, acquisition or regulatory change, to structure their business activities in compliance with Exchange supervisory requirements.

Under the proposed Interpretation, members and member organizations seeking a waiver of the on-site qualified branch office manager requirement for limited purpose offices would be required to provide a written plan of risk-based supervision and control acceptable to the Exchange. Notwithstanding the grant of a waiver, all limited purpose offices would be required to be under the close supervision and control of a qualified person, as defined under NYSE Rule 342.13, at the main office or other designated branch office.

The Exchange believes that allowing a risk-based approach to supervision for limited purpose offices would benefit members' and member organizations' diverse business models while maintaining the integrity of their supervision and control systems. The proposed Interpretation sets forth factors to be used in determining whether a location qualifies as a limited purpose office and the supervisory requirements for each such office, including:

(i) The number of registered persons in the office (the RR to offsite Branch Office Manager ratio), their registration category, and the functions they perform (the nature and level of the RRs' responsibilities would be taken into account);

(ii) The scope and types of business activities conducted (in general, the nature of business should not pose special risks or otherwise warrant on-site supervision);

(iii) The nature and complexity of products and services offered (likewise, the products and services offered should not pose special risks or otherwise warrant on-site supervision);

(iv) The volume of business done (*e.g.*, annual revenues, number of transactions, number of customers, *etc.* Locations with high activity levels would generally be deemed more likely to require an on-site manager);

(v) The adequacy of procedures to supervise the limited purpose office activities; and

(vi) The adequacy and independence of systems and supervisory persons for regular and ''for cause'' internal and third party inspections and audits.[6]

With respect to factors (v) and (vi) above, the Exchange expects members and member organizations to present a system of supervision and control

[6] *See also* NYSE Info Memo 04–38 regarding independence of supervision and internal controls.

reasonably designed to detect and prevent regulatory violations and which otherwise meets the requirements of NYSE Rule 342. Such a system should include, but is not limited to, the following elements, where applicable: (1) Clearly articulated policies and procedures, and sufficient resources to implement them; (2) systematic monitoring of activity using routine and exception reporting criteria; (3) an appropriate system of follow-up and review if ''red flags'' are detected, and mechanisms for verifying that deficiencies are corrected; (4) routine and ''for cause'' inspections, including possible use of unannounced surprise inspections; (5) offsite monitoring of trading, handling of funds, and use of personal computers; (6) adequate designation of supervisors and clearly delineated supervisory responsibilities, including a system of review and follow-up to ensure that such supervision is sufficiently independent and is diligently exercised; (7) monitoring of outside business activities and outside accounts; (8) monitoring and surveillance of internal and external communications; and (9) the education and training of RRs and their supervisors to ensure they understand their responsibilities under the firm's procedures and all applicable securities laws.

In addition to the elements enumerated above, members and member organizations should also take into consideration relevant guidance provided by the Exchange and other regulatory bodies when developing their supervisory plan for a proposed limited purpose office.[7]

All of the above factors will be considered as a whole to determine whether an application for limited purpose office status should be granted. However, any one factor could cause an application to be delayed or rejected by the Exchange if it raises a substantive issue with respect to the appropriateness or advisability of a remote supervisory arrangement. If an application for limited purpose office status encompasses more than one office, pursuant to a categorical description or plan, the member organization must submit the proposed list of prospective offices so as to disclose the scope of the request.

Members and member organizations will be responsible for maintaining a readily available, current and accurate list of all locations either specifically approved and designated by the Exchange as a limited purpose office, or otherwise designated as such pursuant to a general categorical description or plan approved by the Exchange. Further, any material change with respect to the representations made by any member or member organization pursuant to this Interpretation with respect to any location so approved and designated must be promptly brought to the attention of the Exchange for reconsideration.

2. Statutory Basis

The basis for the proposed rule change is the requirement under Section 6(b)(5)[8] of the Exchange Act that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2004–51. 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 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–NYSE–2004–51 and should be submitted on or before November 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5879 Filed 10–24–05; 8:45 am]

BILLING CODE 8010–01–P

[7] *See, e.g.,* NYSE Info Memo 04–38 (Amendments to Rules 342, 401, 408 and 410 Relating to Supervision and Internal Controls) (July 26, 2004); SEC Division of Market Regulation Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52634; File No. SR–PCX–2005–111]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change To Establish Certain Fees With Respect to Transactions Executed Through the Intermarket Trading System

October 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 4, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enter into arrangements with other national securities exchanges to pass certain fees they have collected from members for transactions executed on another exchange through the Intermarket Trading System (''ITS''). This proposal does not require changes to PCX rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act [3] requires each national securities exchange to pay the Commission a fee based on the aggregate dollar amount of certain sales of securities (''covered sales''). Rules 31 and 31T, adopted by the Commission in June 2004,[4] established procedures for the calculation and collection of Section 31 fees on such covered sales. Rule 31 requires each national securities exchange that owes Section 31 fees to submit a completed Form R31 to the Commission each month, beginning with July 2004. Rule 31T required each exchange to submit a completed Form R31 for each of the months September 2003 to June 2004, inclusive. Each national securities exchange must report its covered sales volume based on the data from a designated clearing agency, when available. The designated clearing agency for covered sales of equity securities is the National Securities Clearing Corporation (''NSCC''). These covered sales are reported in Part I of Form R31, and each exchange is required to ''provide in Part I only the data supplied to it by a designated clearing agency.'' [5] The data supplied by NSCC for the period September 2003 through August 2004 did not accurately reflect the aggregate dollar value of the covered sales occurring on each exchange to permit reports to be made in accordance with new Rules 31 and 31T. In particular, the data NSCC reported to each national securities exchange included non-covered sales data for sales originating on one exchange and executed on another exchange through the ITS.[6]

Section 31 requires that national securities exchanges pay a fee based on the aggregate dollar amount of sales of securities transacted on the exchange. Given the specific language of Section 31, the Commission in the Adopting Release for Rules 31 and 31T advised that the current methodology for treating sales of securities that occur through ITS [7] was no longer appropriate and that ''it would be simpler and more transparent for each covered [self-regulatory organization (''SRO'')] to report all covered sales that occur on its market.'' The Commission further stated:

> The Commission acknowledges that a covered SRO on which a covered sale occurs as a result of an incoming ITS order may not be able to collect funds to pay the Section 31 fee from one of its own members. However, Section 31 does not address the manner or extent to which covered SROs may seek to recover the amounts that they pay pursuant to Section 31 from their members. Covered SROs may wish to devise new arrangements for passing fees between themselves so that the funds are collected from the covered SRO that originated the ITS order.[8]

The Commission further noted that any such arrangements devised by the SROs would have to be established pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

A subcommittee of the ITS Operating Committee [9] (''Subcommittee'') has had discussions in order to devise new arrangements for passing fees between the ITS participants that (1) were collected from their members for the months of September 2003 through August 2004; and (2) are being collected from their members beginning in September 2004 and continuing. This proposed rule change is being submitted by the PCX with the understanding that the other exchanges participating in the proposed arrangement devised by the subcommittee will be submitting substantially similar rule change proposals.[10]

[3] 15 U.S.C. 78ee.

[4] *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060 (July 7, 2004) (''Adopting Release'').

[5] 17 CFR 240.31(b)(5).

[6] As a result of this and other inaccuracies in the data reported by NSCC, the national securities exchanges were unable to report accurate information on Form R31, unless they made adjustments to the NSCC data based on data other than that provided by NSCC. On October 6, 2004, the Commission's Division of Market Regulation (''Division'') issued a ''no-action'' letter advising exchanges for whom NSCC acts as a designated clearing agency under Rule 31, that the Division staff would not recommend that the Commission take enforcement action if a national securities exchange adjusts the data provided by NSCC to accurately reflect covered sales occurring on the national securities exchange. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission to Ellen J. Neely, Senior Vice President and General Counsel, Chicago Stock Exchange, Inc. (''CHX''), dated October 6, 2004.

[7] In the Adopting Release, the Commission described the current methodology: ''SRO A sends an ITS commitment to a member of SRO B to sell a security, and the commitment is executed on SRO B. Under existing arrangements, SRO A pays the Section 31 fee arising from this trade and passes the fee to its member that initiated the trade. * * * [T]he SROs devised this system because SRO B does not have the ability to require members of SRO A to reimburse it for the cost of its Section 31 fees.'' Adopting Release, 69 FR at 41067.

[8] *Id.*

[9] The ITS participants are American Stock Exchange LLC, Boston Stock Exchange, Chicago Board Options Exchange, CHX, National Association of Securities Dealers (''NASD''), National Stock Exchange, New York Stock Exchange (''NYSE''), PCX, and Philadelphia Stock Exchange.

[10] NASD has determined not to participate in the arrangement for passing fees between exchanges

Continued

Pursuant to the new arrangement being proposed, each ITS participant exchange determines whether it has received and executed more in dollar value of covered sales than it has originated and sent to each other ITS participant exchange. For example, for the historical period, September 2003 through August 2004, SRO A sent ITS commitments for covered sales whose dollar value was $150 million to SRO B for execution. SRO A collected fees from its members to fund its Section 31 obligation for those covered sales executed on SRO B. SRO B, as the executing market center, is obligated to pay the Section 31 fee to the SEC. During the same period, SRO B sent ITS commitments for covered sales whose dollar value was $210 million to SRO A. SRO B collected fees from its members for those covered sales executed on SRO A. SRO A, as the executing market center, is obligated to pay the Section 31 fee to the SEC. Since SRO A executed a greater dollar value of covered sales from SRO B than it sent to SRO B, the proposed arrangement requires SRO A to determine the amount of the fees collected by SRO B from its members based on the aggregate dollar value of covered sales from SRO B and executed on SRO A through ITS commitments. When invoicing SRO B, SRO A will deduct the amount of the fee it owes to SRO B (*i.e.*, the fee amount based on SRO A's $210 million in aggregate covered sales less the fee amount based on SRO B's $150 million in aggregate covered sales) and will invoice only for the difference of $60 million.

Once the fees have been invoiced and paid for the historical period, the ITS participant exchanges plan to use the same arrangement for the period beginning September 2004 and continuing. It is anticipated that the invoicing process will occur twice yearly to coincide with the March 15 and September 30 payment schedule for Section 31 fees set forth in the Act.

To implement this proposed arrangement, an ITS participant exchange will require access to the aggregate dollar value of buy and sell transactions occurring through ITS. Under the proposed arrangement for fees collected for the months of September 2003 through August 2004, an ITS participant exchange may choose to use data obtained from the Inter-market Surveillance Information System (''ISIS'') or data that provides comparable information that includes aggregate dollar value of ITS transactions.[11] The ISIS data is sorted by originating market center (*i.e.*, the sender of an ITS commitment) and receiving market center (*i.e.*, the market center that executes the ITS commitment). Using this data, each ITS participant exchange can determine on a monthly basis the dollar value of all executed commitments sent to and received from another ITS participant exchange.

At its meeting on February 23, 2005, the Subcommittee asked the Securities Industry Automation Corporation (''SIAC'') to determine the time and expense involved for SIAC to use the ITS database that it maintains to provide reports of the aggregate dollar value of buy and sell transactions occurring through ITS to the ITS participants. On March 15, 2005, representatives of the Subcommittee authorized SIAC to develop new reports. SIAC is in the process of developing these reports and expects to complete testing by August 31, 2005. Once SIAC can provide this data, it will no longer be necessary for ISIS data to be used. The new reports provided by SIAC will be used by ITS participants in connection with determining which ITS participant exchange will pay the fee for transactions occurring through ITS and which ITS participant exchange has collected the fee from its members.

The PCX believes that the proposed arrangement is a fair and efficient means for passing fees collected at one ITS participant exchange based upon executions of covered sales occurring at another ITS participant exchange. The PCX acknowledges that the legal duty to report and pay the Section 31 fee remains with the ITS participant on which the sale was in fact transacted.

2. Statutory Basis

This proposal would establish a process for SROs to enter into arrangements to pass fees they have collected from members for transactions executed on another SRO through ITS. For these reasons, the Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[14] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–111 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–PCX–2005–111. 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

although they participated in many of the conference calls regarding the proposed arrangement.

[11] The NYSE has made available to the ITS participants spreadsheets for each month in the period using the ISIS data.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–111 and should be submitted on or before November 15, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[16] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. National securities exchanges obtain funds to pay their Section 31 fees to the Commission by charging fees to broker-dealers who generate the covered sales on which Section 31 fees are based. An exchange can obtain most of these funds by imposing a fee on one of its members whenever the member is on the sell side of a transaction. However, when the exchange accepts an ITS commitment to buy, the ultimate seller is a party on another market. The exchange lacks the ability to pass a fee to that seller directly, because the seller may not be a member of the exchange. Under the proposed arrangement, which the Commission understands will be adopted by each of the ITS participant exchanges,[17] the exchange that routed the ITS commitment away will continue to collect a fee from the broker-dealer that placed the sell order. Then, with respect to each ITS participant exchange, the exchange will determine whether it is a net sender or net receiver of ITS trades and send fees to or accept fees from each other exchange accordingly. The Commission believes this is an equitable manner for the exchanges to obtain funds to pay their Section 31 fees on covered sales resulting from ITS trades.

Under Section 19(b)(2) of the Act,[18] the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. In this case, the Commission does not believe a comment period is necessary because all of the parties affected by the proposed fee—the other ITS participant exchanges—have already consented to and will adopt the same fee arrangement.[19]

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.[20]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–PCX–2005–111) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5891 Filed 10–24–05; 8:45 am]

BILLING CODE 8010–01–P

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(4).

[17] *See* letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, and Chairman, Subcommittee, to Michael Gaw, Assistant Director, Division, Commission, dated September 29, 2005.

[18] 15 U.S.C. 78s(b)(2).

[19] *See supra* note 17.

[20] *Id.*

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner; Cost-of-Living Increase and Other Determinations for 2006

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 4.1 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 2005;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2006 to $603 for an eligible individual, $904 for an eligible individual with an eligible spouse, and $302 for an essential person;

(3) The student earned income exclusion to be $1,460 per month in 2006 but not more than $5,910 in all of 2006;

(4) The dollar fee limit for services performed as a representative payee to be $33 per month ($64 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2006;

(5) The national average wage index for 2004 to be $35,648.55;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $94,200 for remuneration paid in 2006 and self-employment income earned in taxable years beginning in 2006;

(7) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 2006 to be $1,040 and $2,770;

(8) The dollar amounts (''bend points'') used in the primary insurance amount benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2006 to be $656 and $3,955;

(9) The dollar amounts (''bend points'') used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2006 to be $838, $1,210, and $1,578;

(10) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2006 to be $970;

(11) The ''old-law'' contribution and benefit base to be $69,900 for 2006;

(12) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2006 to be $1,450, and the corresponding amount for non-blind disabled persons to be $860;

(13) The earnings threshold establishing a month as a part of a trial work period to be $620 for 2006; and

(14) Coverage thresholds for 2006 to be $1,500 for domestic workers and $1,300 for election workers.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security

Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. Information relating to this announcement is available on our Internet site at *http://www.socialsecurity.gov/OACT/COLA/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, the Commissioner must publish within 45 days after the close of the third calendar quarter of 2005 the benefit increase percentage and the revised table of ''special minimum'' benefits (section 215(i)(2)(D)). Also, the Commissioner must publish on or before November 1 the national average wage index for 2004 (section 215(a)(1)(D)), the OASDI fund ratio for 2005 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2006 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2006 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2006 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2006 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2006 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The next cost-of-living increase, or automatic benefit increase, is 4.1 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 4.1 percent for individuals eligible for December 2005 benefits, payable in January 2006. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 4.1 percent effective for payments made for the month of January 2006 but paid on December 30, 2005. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 2005 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective for December 2005, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 2005, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 2004 to the third quarter of 2005.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. We round the arithmetic mean, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2004, is: for July 2004, 184.9; for August 2004, 185.0; and for September 2004, 185.4. The arithmetic mean for this calendar quarter is 185.1. The corresponding Consumer Price Index for each month in the quarter ending September 30, 2005, is: for July 2005, 191.0; for August 2005, 192.1; and for September 2005, 195.0. The arithmetic mean for this calendar quarter is 192.7. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 2005, exceeds that for the calendar quarter ending September 30, 2004 by 4.1 percent (rounded to the nearest 0.1), a cost-of-living benefit increase of 4.1 percent is effective for benefits under title II of the Act beginning December 2005.

Section 215(i) also specifies that an automatic benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the ''OASDI fund ratio'' for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. (The expenditures in the ratio's denominator exclude transfer payments between the two trust funds, and reduce any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.) For 2005, the OASDI fund ratio is assets of $1,686,839 million divided by estimated expenditures of $528,693 million, or 319.1 percent. Because the 319.1-percent OASDI fund ratio exceeds 20.0 percent, the automatic benefit increase for December 2005 is not limited.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 2006, benefits will increase by 4.1 percent beginning with benefits for December 2005 which are payable in January 2006. In the case of first eligibility after 2005, the 4.1 percent increase will not apply.

For eligibility after 1978, benefits are generally determined using a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by means of a benefit table. You may obtain a copy of this table by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235. The table is also available on the Internet at *www.socialsecurity.gov/OACT/ProgData/tableForm.html.*

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner will publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as ''special minimum'' benefits. These benefits are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 ''years of coverage.'' To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the ''old-law'' contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 4.1 percent automatic benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2005

Number of years of coverage	Primary insurance amount	Maximum family benefit
11	$33.20	$50.40
12	67.30	101.80

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2005—Continued

Number of years of coverage	Primary insurance amount	Maximum family benefit
13	101.70	153.10
14	135.70	204.10
15	169.60	255.20
16	203.90	306.80
17	238.20	358.30
18	272.40	409.40
19	306.40	460.70
20	340.70	511.80
21	375.00	563.50
22	408.90	614.60
23	443.60	666.60
24	477.70	717.50
25	511.80	768.20
26	546.50	820.50
27	580.20	871.50
28	614.50	922.60
29	648.50	974.20
30	682.70	1,024.90

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, maximum SSI Federal benefit amounts for the aged, blind, and disabled will increase by 4.1 percent effective January 2006. For 2005, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$579, $869, and $290, respectively—from corresponding yearly unrounded Federal SSI benefit amounts of $6,955.39, $10,431.91, and $3,485.67. For 2006, these yearly unrounded amounts increase by 4.1 percent to $7,240.56, $10,859.62, and $3,628.58, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2006, are $7,236, $10,848, and $3,624. Dividing the yearly amounts by 12 gives the corresponding monthly amounts for 2006—$603, $904, and $302, respectively. In the case of an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII of the Act provides for special benefits to certain World War II veterans residing outside the United States. Section 805 provides that ''[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month.'' Thus the monthly benefit for 2006 under this provision is 75 percent of $603, or $452.25.

Student Earned Income Exclusion

A blind or disabled child, who is a student regularly attending school, college, or university, or a course of vocational or technical training, can have limited earnings that are not counted against his or her SSI benefits. The maximum amount of such income that may be excluded in 2005 is $1,410 per month but not more than $5,670 in all of 2005. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2006, we increase the corresponding unrounded amount for 2005 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2005 is $1,407.25. We increase this amount by 4.1 percent to $1,464.95, which we then round to $1,460. Similarly, we increase the unrounded yearly amount for 2005, $5,672.63, by 4.1 percent to $5,905.21 and round this to $5,910. Thus the maximum amount of the income exclusion applicable to a student in 2006 is $1,460 per month but not more than $5,910 in all of 2006.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $32 per month ($61 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Thus we increase the current amounts by 4.1 percent to $33 and $64 for 2006.

National Average Wage Index for 2004

General

Under various provisions of the Act, several amounts increase automatically with annual increases in the national average wage index. The amounts are: (1) The OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or ''bend points,'' in the primary insurance amount and maximum family benefit formulas; (4) the amount of earnings required for a worker to be credited with a quarter of coverage; (5) the ''old-law'' contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (6) the substantial gainful activity amount applicable to statutorily blind individuals; and (7) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

In addition to the amounts required by statute, two amounts increase automatically under regulatory requirements. The amounts are (1) the substantial gainful activity amount applicable to non-blind disabled persons, and (2) the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

Computation

The determination of the national average wage index for calendar year 2004 is based on the 2003 national average wage index of $34,064.95 announced in the **Federal Register** on October 26, 2004 (69 FR 62497), along with the percentage increase in average wages from 2003 to 2004 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $32,678.48 and $34,197.63 for 2003 and 2004, respectively. To determine the national average wage index for 2004 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2003 national average wage index of $34,064.95 by the percentage increase in average wages from 2003 to 2004 (based on SSA-tabulated wage data) as follows, with the result rounded to the nearest cent.

Amount

Multiplying the national average wage index for 2003 ($34,064.95) by the ratio of the average wage for 2004 ($34,197.63) to that for 2003 ($32,678.48) produces the 2004 index,

$35,648.55. The national average wage index for calendar year 2004 is about 4.65 percent greater than the 2003 index.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $94,200 for remuneration paid in 2006 and self-employment income earned in taxable years beginning in 2006.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 2006 is 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 2006 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 2006, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 2006, at the rate of 2.9 percent.)

(b) It is the maximum annual amount of earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2006 shall be the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2004 to that for 1992; or (2) the current base ($90,000). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 OASDI contribution and benefit base amount ($60,600) by the ratio of the national average wage index for 2004 ($35,648.55 as determined above) to that for 1992 ($22,935.42) produces the amount of $94,190.65. We round this amount to $94,200. Because $94,200 exceeds the current base amount of $90,000, the OASDI contribution and benefit base is $94,200 for 2006.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the normal retirement age (NRA) has earnings in excess of the applicable retirement earnings test exempt amount. (NRA is the age of initial benefit entitlement for which the benefit, before rounding, is equal to the worker's primary insurance amount. The NRA is age 65 for those born before 1938, and it gradually increases to age 67.) A higher exempt amount applies in the year in which a person attains his/her NRA, but only with respect to earnings in months prior to such attainment, and a lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act, as amended by section 102 of Public Law 104–121, provides formulas for determining the monthly exempt amounts. The corresponding annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries attaining NRA in the year, we withhold $1 in benefits for every $3 of earnings in excess of the annual exempt amount for months prior to such attainment. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries who are under NRA and who will not attain NRA in 2006, the lower monthly exempt amount for 2006 shall be the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2004 to that for 1992; or (2) the 2005 monthly exempt amount ($1,000). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Under the formula applicable to beneficiaries attaining NRA in 2006, the higher monthly exempt amount for 2006 shall be the larger of: (1) The 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2004 to that for 2000; or (2) the 2005 monthly exempt amount ($2,650). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1992 ($22,935.42) produces the amount of $1,041.38. We round this to $1,040. Because $1,040 is larger than the corresponding current exempt amount of $1,000, the lower retirement earnings test monthly exempt amount is $1,040 for 2006. The corresponding lower annual exempt amount is $12,480 under the retirement earnings test.

Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2004 ($35,648.55) to that for 2000 ($32,154.82) produces the amount of $2,771.63. We round this to $2,770. Because $2,770 is larger than the corresponding current exempt amount of $2,650, the higher retirement earnings test monthly exempt amount is $2,770 for 2006. The corresponding higher annual exempt amount is $33,240 under the retirement earnings test.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's ''average indexed monthly earnings'' to compute the primary insurance amount. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or ''index,'' a worker's earnings to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the average indexed monthly earnings, we first determine the required number of years of earnings. Then we select that number of years with the highest indexed earnings, add the indexed earnings, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2006, we divide the national average wage index for 2004, $35,648.55, by the national average wage index for each year prior to 2004 in which the worker had earnings. Then we multiply the actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, by the corresponding ratio to obtain the worker's indexed earnings for each year before 2004. We consider any earnings in 2004 or later at face value, without indexing. We then compute the average indexed monthly earnings for determining the worker's primary insurance amount for 2006.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the average indexed monthly earnings the ''bend points'' of the formula. Thus, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2006, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2004 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1977 ($9,779.44) produces the amounts of $656.15 and $3,955.10. We round these to $656 and $3,955. Accordingly, the portions of the average indexed monthly earnings to be used in 2006 are the first $656, the amount between $656 and $3,955, and the amount over $3,955.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2006, or who die in 2006 before becoming eligible for benefits, their primary insurance amount will be the sum of:

(a) 90 percent of the first $656 of their average indexed monthly earnings, plus
(b) 32 percent of their average indexed monthly earnings over $656 and through $3,955, plus
(c) 15 percent of their average indexed monthly earnings over $3,955.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the ''bend points'' of the family-maximum formula.

To obtain the bend points for 2006, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2004 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1977 ($9,779.44) produces the amounts of $838.41, $1,210.22, and $1,578.40. We round these amounts to $838, $1,210, and $1,578. Accordingly, the portions of the primary insurance amounts to be used in 2006 are the first $838, the amount between $838 and $1,210, the amount between $1,210 and $1,578, and the amount over $1,578.

Consequently, for the family of a worker who becomes age 62 or dies in 2006 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed:

(a) 150 percent of the first $838 of the worker's primary insurance amount, plus
(b) 272 percent of the worker's primary insurance amount over $838 through $1,210, plus
(c) 134 percent of the worker's primary insurance amount over $1,210 through $1,578, plus
(d) 175 percent of the worker's primary insurance amount over $1,578.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2006 is $970. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2006 shall be the larger of: (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 2004 to that for 1976; or (2) the current amount of $920. Section 213(d) further provides that if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1976 ($9,226.48) produces the amount of $965.93. We then round this amount to $970. Because $970 exceeds the current amount of $920, the quarter of coverage amount is $970 for 2006.

''Old-Law'' Contribution and Benefit Base

General

The ''old-law'' contribution and benefit base for 2006 is $69,900. This is the base that would have been effective under the Act without the enactment of the 1977 amendments.

The ''old-law'' contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the ''old-law'' base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The ''old-law'' contribution and benefit base shall be the larger of: (1) the 1994 ''old-law'' base ($45,000) multiplied by the ratio of the national average wage index for 2004 to that for 1992; or (2) the current ''old-law'' base ($66,900). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 ''old-law'' contribution and benefit base amount ($45,000) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1992 ($22,935.42) produces the amount of $69,943.55. We round this amount to $69,900. Because $69,900 exceeds the current amount of $66,900, the ''old-law'' contribution and benefit base is $69,900 for 2006.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals under title II while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals. Both SGA amounts increase in accordance with increases in the national average wage index.

Computation

The monthly SGA amount for statutorily blind individuals under title II for 2006 shall be the larger of: (1) Such amount for 1994 multiplied by the ratio of the national average wage index for 2004 to that for 1992; or (2) such amount for 2005. The monthly SGA amount for non-blind disabled individuals for 2006 shall be the larger of: (1) Such amount for 2000 multiplied by the ratio of the national average wage index for 2004 to that for 1998; or (2) such amount for 2005. In either case, if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1992 ($22,935.42) produces the amount of $1,445.50. We then round this amount to $1,450. Because $1,450 is larger than the current amount of $1,380, the monthly SGA amount for statutorily blind individuals is $1,450 for 2006.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1998 ($28,861.44) produces the amount of $864.61. We then round this amount to $860. Because $860 is larger than the current amount of $830, the monthly SGA amount for non-blind disabled individuals is $860 for 2006.

Trial Work Period Earnings Threshold

General

During a trial work period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period. In 2005, any month in which earnings exceed $590 is considered a month of services for an individual's trial work period. In 2006, this monthly amount increases to $620.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2006, used to determine whether a month is part of a trial work period, is such amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2004 to that for 1999, or, if larger, such amount for 2005. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1999 ($30,469.84) produces the amount of $620.08. We then round this amount to $620. Because $620 is larger than the current amount of $590, the monthly earnings threshold is $620 for 2006.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2006, this threshold is $1,500. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2006 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2004 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1993 ($23,132.67) produces the amount of $1,541.05. We then round this amount to $1,500. Accordingly, the domestic employee coverage threshold amount is $1,500 for 2006.

Election Worker Coverage Threshold

General

The minimum amount an election worker must earn so that such earnings are covered under Social Security or Medicare is the election worker coverage threshold. For 2006, this

threshold is $1,300. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election worker coverage threshold amount for 2006 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2004 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1997 ($27,426.00) produces the amount of $1,299.81. We then round this amount to $1,300. Accordingly, the election worker coverage threshold amount is $1,300 for 2006.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 18, 2005.

Jo Anne B. Barnhart,

Commissioner, Social Security Administration.

[FR Doc. 05–21272 Filed 10–24–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5170]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting from 10 a.m. to 11 a.m. on Monday, November 14, 2005, in Room 6103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 23rd Extraordinary Session of Council, 95th Session of Council and 24th Session of the Assembly of the International Maritime Organization (IMO), which are scheduled for November 17, 2005 thru December 2, 2005, at the IMO Headquarters in London. Discussion will focus on papers received and draft U.S. positions.

Items of particular interest include:

—Reports of Committees;
—Reports on Diplomatic Conferences;
—Work Program and Budget for 2006–2007; and
—Election of Members of the Council.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U.S. Coast Guard Headquarters, Commandant (G–CI), room 2114, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2280.

Dated: October 13, 2005.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–21280 Filed 10–24–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be on November 9, 2005, at 10 a.m.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 2nd floor, Bessie Coleman Room.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov*.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee taking place on November 9, 2005, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agenda includes:

- ISO Feedback (Pilot ARM Feedback Form).
- EASA discussion.
- ARAC Web Changes.
- Future of ARAC/Recertification of ARAC membership/Charter renewal.
- 2006 Meeting dates—frequency (2 versus 4).
- Issue Area Status Reports from Assistant Chairs.
- Remarks from other EXCOM members.

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by October 31. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by October 31 to present oral statements at the meeting. The public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on October 18, 2005.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 05–21234 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–05–C–00–MCI To Impose a Passenger Facility Charge (PFC) at Kansas City International Airport (MCI) for Use at MCI and Charles B. Wheeler Downtown Airport (MKC), Kansas City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at MCI for use at MCI and MKC under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 25, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 901 Locust, Kansas City, Missouri 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark VanLoh, Director of Aviation of the Kansas City Aviation Department at the following address: 601 Brasilia Avenue, Kansas City, Missouri 64153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kansas City Aviation Department under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Program Manager, 901 Locust, Kansas City, Missouri 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Kansas City International Airport for use at Kansas City International Airport and Charles B. Wheeler Downtown Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 27, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Kansas City Aviation Department was not substantially complete within the requirements of § 158.25 of Part 158. The following items were required to complete the application: Airspace determinations on the new aircraft rescue fire fighting facility, perimeter fencing replacement at MKC, and the upgrade of the glycol collection system. The Kansas City Aviation Department has submitted the supplemental information to complete this application. The FAA will approve or disapprove the application, in whole or in part, not later than February 9, 2006.

The following is a brief overview of the application.

Proposed charge effective date: January 1, 2015.

Proposed charge expiration date: February 1, 2017.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $56,946,228.

Brief description of proposed project(s): Two new aircraft rescue fire fighting (ARFF) vehicles, extend Taxiways B and D, rehabilitate Taxiways M and L, update airport master plan and Part 150 study, New ARFF facility, inline baggage screening system, rehabilitate Taxiway D, airfield lighting rehabilitation, perimeter fencing replacement—MKC, terminal improvements—holdrooms, upgrade glycol collection system, airfield snow removal equipment building, new airfield sand & deicer storage building, triturator and garbage facility, fuel farm relocation—MKC.

Class or classes of air carriers which the public agency has requested not to be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 901 Locust, Kansas City, Missouri 64106.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kansas City Aviation Department.

Issued in Kansas City, Missouri on October 17, 2005.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 05–21227 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2005–22765]

Wet Lease Policy Guidance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; request for comments.

SUMMARY: It has long been contrary to Federal Aviation Regulations for an air carrier to ''wet lease'' an aircraft from an individual or entity that is not separately authorized to engage in common carriage. By this notice, the Federal Aviation Administration (FAA) seeks comment on proposed policy guidance identifying those commercial arrangements that would be considered to be unlawful wet lease arrangements under these regulations as well as those that would be permissible. Additionally, we seek comment on our proposed treatment of certain other commercial arrangements between air carriers and aircraft owners that—while not amounting to illegal wet leases—could nevertheless result in the air carrier impermissibly ceding operational control of flight to non-certificated entities.

DATES: Send your comments on or before November 25, 2005.

ADDRESSES: You may send comments [identified by Docket No. FAA–2005–22765] 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. 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 FURTHER INFORMATION CONTACT: Kent Stephens, Aviation Safety Inspector, Air Transportation Division, Flight Standards Service, Room 831, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–8166.

Comments Invited

The FAA invites interested persons to submit written comments, data and views on the draft guidance contained in Section D below. The most helpful comments reference a specific portion of the proposed guidance, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed policy. 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 notice 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 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.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Aviation Regulations provide that only entities properly certificated by the FAA may maintain operational control of any flight conducted for commercial purposes under 14 CFR parts 121 and 135. Recent information obtained by the FAA regarding certain arrangements in the on-demand air carrier industry has highlighted existing concern over whether the air carriers in such arrangements are consistently maintaining (as required) operational control of all flights purportedly conducted under the authority of their certificates. In some cases, air carriers have evidently allowed aircraft owners and lessees who hold no commercial certificates to conduct operations under the auspices of the air carrier's certificate, and in a few cases, falsely holding themselves out to the public as air carriers themselves. As a result, some members of the traveling public have paid for air transportation by persons that do not hold proper FAA certification and, just as important, do not necessarily comply with the more demanding safety rules for air carriers and other commercial operators.

The FAA has taken several actions to address this problem. We have begun enforcement proceedings to halt the effective franchising of air carrier certificates and the conduct of air carrier operations by unqualified persons. On June 10, 2005 the FAA's Flight Standards Service issued a notice to all inspectors directing them to contact each air carrier they oversee to make sure that these carriers understand their obligations to maintain operational control of flights conducted under their certificates. In addition, the FAA has sent out information request to air carriers to ascertain the types of arrangements under which they conduct their business so as to assess whether those arrangements comply with these obligations.

The guidance proposed in this notice is intended to assist air carriers and others in evaluating whether certain arrangements, including aircraft leases and related agreements, are consistent with operational control requirements.[1]

B. Operational Control

In connection with its safety oversight and investigatory responsibilities, the FAA must always be able to identify who is accountable for the safety of each flight, whether commercial or not. Central to this inquiry is determining which person or entity as a factual matter exercise operational control of any particular flight. Our regulations provide that operational control means ''with respect to a flight, * * * the exercise of authority over initiating, conducting or terminating a flight.'' See 14 CFR 1.1. We attempt to determine who has ''real-world'' control over an aircraft and its crew by evaluating all the facts and circumstances surrounding that flight operation. The FAA, the National Transportation Safety Board, the courts, and others look beyond the written provisions of contracts and other commercial documents and the parties' assertions regarding ''operational control'' to determine who—as a factual matter—controlled a flight operation.

For purposes of this guidance, a ''surrender of operational control'' by an air carrier means a situation in which an air carrier has inappropriately allowed an uncertificated person or entity to engage in air carrier operations under the carrier's name. See e.g., *Administrator* v. *Darby Aviation d/b/a Alphajet, Inc.*, NTSB Order Number E–5159 (2005). In FAA Notice N 8400.83 (issued on June 10, 2005), the Director of the Flight Standards Service cautioned air carriers and other commercial operators who are certificated under part 119, that they may not franchise or lease out their authority to engage in part 135 operations to third parties, as this constitutes a surrender of operational control.

A ''loss of operational control'' or ''inadquate operational control'' includes those situations in which the carrier has not surrendered control to another person or entity, but has inadequately exercised the necessary supervisory actions over the maintenance of aircraft listed on its operations specifications or has not adequately supervised and directed its own pilots. A carrier has inadequate operational control if it lacks either timely knowledge about the flight and duty status of its pilots, the means to communicate an order to the crew to delay, cancel, or divert a flight, or sufficient leverage or authority over its crews to assure compliance with the carrier's lawful instructions.[2]

In each case in which there is a question about operational control the FAA also must ultimately make a legal determination as to which person should have exercised such control. In some cases the FAA will determine that the operational control of a commercial flight was actually exercised—unlawfully—by an uncertificated person who did not comply with the more demanding safety rules that apply to commercial operations. In other cases, a properly certificated air carrier or commercial operator has actively participated or acquiesced in commercial arrangements that allowed the illegal operator to hold itself out to the public as a legitimate air carrier.

Sometimes unlawful arrangements become apparent only after a review of the written contracts between the parties and other evidence reveals that the relationship obfuscates which entity or person has ''operational control'' of a flight and, thus, which entity or individual should be held accountable for the overall safety of a flight. Where such operations end safely, it has been our experience that the carrier and the aircraft owner typically assert that the commercial operation was lawfully conducted by the air carrier under our regulations. Unfortunately for the public, where such flights involve safety violations, the carriers under whose auspices the flights were conducted may claim they were unaware that a commercial flight occurred under their certificate—even though that aircraft is on the part 135 operator's specifications. The carrier may point to the fact that it never had legal possession of the aircraft that was illegally flown in commercial operations, and thus the carrier will disclaim responsibility for the operation. The FAA deems arrangements that facilitate such confusion to be wholly at odds with the requirement that an air carrier must

[1] This proposed guidance concerns requirements related to safety regulation by the FAA. Carriers and others should note that it does not address economic regulatory requirements, which are separate and under the purview of the Office of the Secretary of the Department of Transportation.

[2] It is not considered a proper exercise of ''operational control'' for the carrier to delegate to the pilot in command the responsiblity for determining for the carrier whether the pilot in command and other flight crewmembers are qualified for the flight that day. The safety benefit in the FAA rules of having ''redundancy''—here, the carrier verifying the qualifications of the pilots for the flight—cannot be overstated. The carrier itself has to determine, for example, whether the flight crew meets rest period requirements and whether the flight crewmember has exceeded flight time limits. The safety benefits of having a redundant safety duty imposed—on both the carrier and the pilot—is lost if the carrier delegates its independent responsibility to the pilot.

clearly retain operational control of all its flights, and we will, at a minimum, act promptly to remove aircraft used in such arrangements from the air carrier's operations specifications.

Finally, it should be without saying that any air carrier must have in place personel who are knowledgeable about aviation, including FAA safety regulations, such that they can gather and review relevant information about the airworthiness of the aircraft and the condition of the crewmembers. If the air carrier does not have knowledgeable people in place, it is highly unlikely that the carrier will meet the stringent safety standards necessary to satisfy the statutory ''duty * * * to provide service with the highest possible degree of safety in the public interest.'' See 49 USC Section 44701(d)(1).

C. Affected Commercial Arrangement

Commercial arrangements between U.S. air carriers and others must ensure effective operational control by an air carrier over its flights. Beyond avoiding wet leases with non-certificated entities (discussed below), a carrier must generally ensure that all business arrangements provide its management personnel with not only the contractual authority to direct the crewmembers to terminate, delay, divert or modify the carrier's flights, but also with effective authority by virtue of their relationship with the crewmembers. It is not enough simply to assert in a contract that the carrier has ''operational control'' if other aspects of the parties' agreements undermine or otherwise nullify effective means of control by the carrier.

1. Wet Leases

The FAA prohibits ''wet leases'' between a certificate holder under part 119 and a foreign air carrier or another foreign person or any other person not authorized to engage in common carriage. See 14 CFR 119.53(b). To understand a ''wet lease,'' one must first understand the meaning of a ''dry lease.'' In aviation, a dry lease occurs when legal possession of an aircraft transfers from the owner to another person (whether that person is the first lessee or a sublessee). A ''wet lease,'' under the Federal Aviation Regulations, is any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. See 14 CFR 119.3

The agency adopted the prohibition on wet leases in § 119.53(b), in part, because we were concerned that the air carrier might not exercise operational control over the crew leased from the other (non-certificated) entity, with the result that the entire operation would not be under the direction and control of the certificated air carrier. In a true dry lease, the lessee is fully accountable for the safety of the flight operations it conducts with the aircraft in its possession. In contrast to a dry lease situation, in a wet leasing arrangement, although the lessee nominally has legal possession of the aircraft, the actual control of the aircraft is with the entity directing the crewmembers. Where only one of the parties has been certificated to engage in common carriage operations, the other's agreement to provide the crew raises significant issues as to who really has control over the crew: the lessor or the air carrier.

2. Permissible Use of the Aircraft Owner's Crew

The FAA is well aware that many aircraft owners lease their aircraft to part 135 on-demand operators so as to recover overhead expenses when the owner does not need to use the aircraft. Nothing in this guidance is intended to bar these arrangements or to prohibit any air carrier from dry leasing an aircraft from its owners or lessor. The FAA has no safety objections to this practice so long as the air carrier—and no one else—exercises actual operational control of the for-hire flights. To satisfy this requirement, the carrier must have effective mechanisms in place to make sure the crews will adhere to the carrier's instructions. Moreover, the carrier cannot participate in an arrangement that allows the aircraft owner to interfere with the carrier's ability to make and implement safety decisions needed to comply with FAA air carrier safety rules. In particular, we think it inappropriate for an aircraft owner or other non-certificated entity to determine who will be the pilots assigned to a part 135 flight. Thus, the carrier may not enter into any contract by which it agrees directly or indirectly to utilize only the aircraft owner's or lessor's pilots when conducting part 135 flights.

By this notice the FAA does not intend to prohibit air carriers from using a pilot in part 135 operations simply because that pilot also is employed by the owner of the aircraft. A key question in such commercial arrangements is whether the carrier is obligated directly or indirectly to use the aircraft owner's crew. In this regard, a critical factor would be written acknowledgements by the carrier, the aircraft owner, and the pilots that the crew serves as the agents of the air carrier during all part 135 operations. An acknowledgement that the pilots are the carrier's agents (even where the pilots remain the employees of the owner, as evidenced, for example, by the owner's issuance of IRS Form W–2's) helps reduce any confusion as to which party has the authority and the responsibility to conduct a safe for-hire flight. We believe that such an acknowledgement may cause air carriers to exercise greater oversight of aircraft placed on their operations specifications and to take whatever steps are necessary to ensure the aircraft owners do not hold themselves out as conducting commercial flights under the auspices of the air carriers' certificates.

3. Other Arrangements

Operational control issues do not arise solely in the context of wet leases to air carriers from people not authorized to engage in common carriage. Even in situations where it is legal for a carrier to enter into a wet lease (e.g., a U.S. carrier can wet lease from another U.S. carrier), operational control issues arise and thus the FAA requires that such leases be submitted to the FAA for an assessment as to which FAA-certificated carrier has operational control. See 14 CFR 119.53(a) and 119.53(c). Typically, in such agreements, the wet lessor will have operational control instead of the lessee primarily because of the former's business relationship with the crew. We permit these arrangements because there is an assurance that all the parties know that the revenue flights must be flown under part 121 or 135, and both parties have been certificated for air carrier operations.

D. Proposed Guidance

When our Flight Standards Service discovers contractual language or other evidence of wet leasing prohibited under section 119.53(b), our current policy is to take two actions. First, we will not add aircraft to a carrier's operations specifications to the extent such aircraft are subject to wet leases. Second, we will begin an investigation as to the carrier's use of other aircraft already on its operations specifications to ascertain whether they involve an improper wet lease under section 119.53(b).

1. Wet Leases

a. If an air carrier and an aircraft owner (or someone having legal possession of the aircraft) enter into an agreement whereby legal possession of a specific aircraft is transferred from the owner (or first lessee) to the air carrier and if the owner (or first lessee) provides a crewmember as part of the lease, then such an arrangement constitutes a wet lease.

b. If an air carrier and an aircraft owner enter into an agreement

captioned as a ''dry lease'' of an aircraft from the owner to the air carrier, and in a separate document the same parties agree that the owner will provide a crewmember to the carrier, such an arrangement would still constitute a wet lease. The FAA would evaluate the two documents together. Such an arrangement (assuming the owner is not a certified air carrier) also would be contrary to section 119.53(b). An air carrier does not have actual operational control of the carrier flight operations if a person other than the air carrier can determine who the pilots of the aircraft will be or can exercise control over those pilots.

c. If an air carrier and an aircraft owner enter into an arrangement labeled as a ''dry lease'' of an aircraft from the owner to the carrier but in a separate document the parties give the owner the right to consent to or approve of the selection of crew, then such an arrangement might be treated as a wet lease depending on the particular circumstances. If in practice only the owner's pilots would be approved (as shown, for example, by evidence that all other pilots had been vetoed for use by the owner), the FAA would deem this leasing arrangement to be a ''wet lease'' in contravention of § 119.53(b). A carrier cannot be said to enjoy actual operational control of its flight operations if an aircraft owner (non-carrier) can effectively veto the carrier's proposed pilot assignments, where those pilots are otherwise qualified and appropriately certificated and trained to conduct carrier flights.

d. The following example would be considered a wet lease by the FAA. Although the carrier is not formally obligated to use the owner's pilots, it is clear from that business arrangement between the carrier and the aircraft owner that the aircraft owner's pilots are provided with the aircraft. Certain aircraft leases contain penalty clauses that provide that if the aircraft owner's pilots are not available to fly the aircraft for the part 135 carrier, then the aircraft owner must compensate the part 135 carrier for any costs the carrier incurs in getting other pilots to fly the aircraft. Because the parties contemplated that the owner would provide both the aircraft and crew, this too constitutes a wet lease, even though the carrier ultimately may use pilots who did not come from the aircraft owner. This type of arrangement is contrary to the provisions of section 119.53(b) of the Federal Aviation Regulations.

2. Other Arrangements Raising Serious Concern as to Operational Control of Flight

a. Operational control issues may arise in situations where there are no leases whatsoever. On occasion an air carrier may make arrangements with an aircraft owner to use its aircraft without entering into a real lease, and thus, the carrier never gets legal possession of the aircraft. This sort of informal arrangement will raise significant legal concerns over inadequate operational control when the carrier has no contractual arrangements with the crew, does not directly pay the crew for their service in air carrier operations, and receives no direct compensation by the customers for transporting passengers or property.

b. Another arrangement raising serious legal concern arises when a certificated air carrier receives a flat ''certificate use'' fee from the aircraft owner regardless of the number of commercial flights conducted per month, and the transportation customer pays the aircraft owner directly. Absent evidence to the contrary showing that the air carrier exercised actual and legal operational control of all flights, such arrangements constitute an inappropriate franchising of an air carrier certificate.

c. Some air carriers only occasionally lease aircraft from particular owners, who may enter into similar arrangements with multiple carriers. Although our rules do not forbid this practice, each carrier must ensure in all of its leasing arrangements that there are mechanisms in place to avoid confusion over who is using the aircraft and when. Similarly, the carrier must have procedures that ensure that the crewmembers adhere to the instructions of the carrier, not the aircraft owner.

E. Conclusion: Recommended Carrier Review of Existing Leasing Arrangements

The foregoing discussion is intended to provide the public, including air carriers and aircraft owners, with a better understanding of the FAA's concerns about the key safety issues linked to operational control of flights made under the authority of FAA certificates. The discussion is also intended to encourage air carriers to closely consider whether their business arrangements comport with the requirements for maintaining operational control. The FAA urges all air carriers to review the leasing and other arrangements they have with aircraft owners to ensure compliance with the regulations. In this regard, the FAA encourages carriers to consider whether they have sufficient controls in place that they have timely knowledge to answer the following questions:

1. What is the actual location of each aircraft listed on the carrier's operations specifications?
2. Who has the carrier authorized to fly the aircraft?
3. Does the carrier have mechanisms in place to prevent unauthorized use of the aircraft?
4. Who or what is being transported on the aircraft?
5. Is a given flight for compensation or hire?
6. If the flight is for compensation or hire, are the crewmembers properly certificated and trained?
7. Are the crewmembers loyal to the air carrier (as opposed to the aircraft owner or some other entity) so that they will adhere to the carrier's instructions not to fly or to delay a flight or to divert a flight?
8. What procedures and mechanisms are in place so that the carrier can fulfill its duty to ensure that the aircraft is airworthy and meets all of the carrier's maintenance programs?

Issued in Washington, DC on October 19, 2005.

James J. Ballough,

Director, Flight Standards Service.

Andrew B. Steinberg,

Chief Counsel.

[FR Doc. 05–21226 Filed 10–19–05; 3:13 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for the Downtown Birmingham/University of Alabama Birmingham Activity Centers (a.k.a. In-town Transit Partnership Project)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an Alternatives Analysis (AA) and Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration and the Regional Planning Commission of Greater Birmingham are conducting an alternatives analysis and preparing a Draft Environmental Impact Statement (DEIS) for transit improvements in the Downtown Birmingham/University of Alabama Birmingham Activity Centers. The FTA is the lead federal agency and the DEIS will be prepared in accordance with National Environmental Policy Act (NEPA) and the applicable regulations

for implementing NEPA, as set forth in 23 CFR part 771 and 40 CFR parts 1500–1508, as well as applicable laws and regulations including section 4(f) of the Department of Transportation Act of 1966, the Clean Air Act, and Executive Order 12898 on Environmental Justice.

The project will consider the following alternatives: (1) A No-Build Alternative consisting of improvements included in the Birmingham MPO 2030 Long Range Transportation Plan; (2) Transportation System Management (TSM) Alternative that includes all reasonable cost-effective transit service improvements in the study area short of the major investment in a New starts project; (3) Build Alternative: Bus Rapid Transit (BRT) project using rubber tired vehicles operating either in mixed traffic or along an exclusive right-of-way; and (4) Build Alternative: Streetcar using light rail technology operating along tracks embedded in the pavement operating in either mixed traffic or along an exclusive right-of-way. The type, location, and need for ancillary facilities such as maintenance facilities will also be considered for each alternative. In addition, alternatives that are identified during the scoping process will be evaluated in the AA.

Scoping will be accomplished through correspondence and discussions with interested persons; organizations; and Federal, State, and local agencies; and through public and agency meetings. Depending on the outcome of the scoping process and the analysis of a range of transit alternatives in the DEIS, a Locally Preferred Alternative (LPA) will be selected and addressed in the Final EIS (FEIS). The FEIS will address the potential impacts of the selected investment strategy and a No-Build Alternative.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered in the AA/DEIS must be received no later than January 20, 2006 and must be sent to the Regional Planning Commission of Greater Birmingham (RPCGB) at the address indicated below.

Scoping Meeting Date: Public Scoping Meetings will be held on Monday and Tuesday December 5 and 6, 2005 from 1 p.m. to 7 p.m. each day at the Regional Center for Planning and Design 1st Floor Conference Room located at the Regional Planning Commission of Greater Birmingham, 1731 First Avenue North, Birmingham, AL 35203. Presentation boards depicting the project concept will be available for review at the meeting location. Formal presentations will be made at 2 p.m. and 6 p.m. each day. This will be followed by the opportunity for the public to make comments on the scope of the EIS. Regional Planning Commission of Greater Birmingham staff will be available for informal questions and comments throughout the duration of each scoping meeting. Oral and written comments may be given at the scoping meeting; a stenographer will record oral comments. Persons with disabilities or other special needs such as sign language interpretation should contact Darrell Howard at the RPCGB (see **ADDRESSES** section below) 72 hours prior to the scoping meeting for special arrangements. The location is accessible to people with disabilities.

ADDRESSES: Written comments on the project scope should be sent to: Mr. Darrell Howard, Principal Transportation Planner, Regional Planning Commission of Greater Birmingham,1731 First Avenue North, Suite 200, Birmingham, AL 35203, Phone (205) 264–8441 ext 441. E-mail *dhoward@rpcgb.org.*

To be added to the mailing list please contact Mr. Darrell Howard at the address listed above. Please specify the mailing list of the Downtown Birmingham/University of Alabama Birmingham Activity Centers (also known as In-town Transit Partnership Project). The dates and address of the scoping meetings are given in the **DATES** section above.

FOR FURTHER INFORMATION CONTACT: To request a scoping information packet, contact Mr. Darrell Howard, Principal Transportation Planner, Regional Planning Commission of Greater Birmingham, 1731 First Avenue North, Suite 200, Birmingham, AL 35203; Phone (205) 264–8441 ext 441. E-mail *dhoward@rpcgb.org.* The Federal agency contact is: Mr. Len Lacour, Transportation Program Specialist, Federal Transit Administration—District 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562–3515. E-mail is *len.lacour@fta.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Study Area and Scope

The Federal Transit Administration, as joint lead agency with the Regional Planning Commission of Greater Birmingham, will prepare an AA/DEIS on a proposal to transit service in a study area that is about 2.5 miles long and 2.5 miles wide that includes the Downtown Birmingham Financial Center, the University of Alabama at Birmingham (UAB) campus, the Five Points South activity center and portions of adjacent neighborhoods. The study area is generally bounded by 13th Avenues North on the north, U.S. 31 and 280 and 35th Street South on the east, 16th Avenue South on the south, and Interstate 65 on the west. Most of the area is densely developed and serves as the Central Business District (CBD) for the City of Birmingham and represents the largest single concentration of employment in the metropolitan area. The project is a result of the Birmingham MPO Strategic Regional Multi-Modal Plan (SRMMP) completed in 1999 and the Birmingham Regional Transportation Alternatives Analysis completed in 2004. The Downtown Birmingham/University of Alabama Birmingham-Southside was one of three corridors recommended for priority action. The AA/DEIS will include an analysis of alternatives and selection of a LPA. This will also include conceptual engineering of the alternatives considered to a level necessary to satisfy the National Environmental Policy Act (NEPA) requirements. Cost estimates and a financial plan that examines alternative funding sources will also be prepared.

II. Purpose and Need

With more than 80,000 daily workers, the Downtown Birmingham and UAB area represents the largest single concentration of employment in the region and is forecast to add another 17,000 employees over the next 20 years. As the largest employer in the metropolitan area, UAB serves as an economic engine for the region and has a growing student enrollment of more than 16,000. The area also includes more than 4.8 million square feet of office development, the city's major convention center, and burgeoning residential development and redevelopment projects in the city center and adjacent neighborhoods. Maintaining and enhancing access into and within these important activity centers is critical for the economic health of the region and quality of life for area residents. Increasing traffic congestion, air quality concerns, parking constraints, and limited transportation choices threaten the continued expansion of this vital area. Transit service options need to be considered that have the potential to: connect regional transit services to destination points in the downtown and university areas, connect residential neighborhoods to employment and retail businesses, reduce the demand for additional parking spaces in the core area, reduce automobile travel for short trips between various destinations within the Downtown and UAB areas, reinforce the city center as a regional

destination, support expansion plans for both UAB and the Convention Center, and better serve transit dependant populations are needed.

III. Alternatives

Alternatives have been identified to address transportation needs in the study area, connecting major activity centers including the Downtown Financial core, University of Alabama Birmingham Campus, Five Points South commercial area, the Convention Center, area hospitals/medical centers, and adjacent neighborhoods. The project will be consistent with Federal Transit Administration (FTA) Alternatives Analysis and Section 5309 New Start Program requirements for determining future federal funding in recommended programs and be consistent with the National Environmental Policy Act (NEPA). The alternatives being considered will analyze mobility needs and identify and compare the costs, benefits, and impacts of a range of transit alignment and technology alternatives. At a minimum the following alternatives will be considered:

- *No-Build Alternative*—This includes all of the transportation improvements included in the RPCGB Year 2030 Long Range Transportation Plan but assumes that the potential new start project being evaluated in the EIS is not constructed.
- *Transportation System Management (TSM) Alternative*—This includes all of the improvements assumed in the No-Build alternative plus other reasonable low cost improvements to address the project purpose and need. The TSM also assumes that the potential new start project being considered in the EIS is not constructed.
- *Build Alternative: Bus Rapid Transit (BRT)*—This assumes that all of the improvements included in the No-Build Alternative are constructed plus the addition of a rubber tired transit service that operates in either mixed traffic or in reserved right-of-way connecting the major activity centers in the study area.
- *Build Alternative: Streetcar*—This assumes that all of the improvements included in the No-Build Alternative are constructed plus the addition of a rail transit service that operates on tracks in either mixed traffic or in reserved right-of-way connecting the major activity centers in the study area.

The alternatives will be developed further during the preparation of the AA/DEIS. Based on previous studies several candidate streets in the study area have been identified as possible alignments for the Build Alternatives. These streets include: 18th Street, 19th Street, 20th Street, and Richard Arrington Blvd in the north-south direction and 5th Avenue South, 6th Avenue South, 7th Avenue South, and University Boulevard in the east-west direction. Additional reasonable Build Alternatives suggested during the scoping process including those involving other modes, may be considered.

IV. Probable Effects

The purpose of the DEIS is to fully disclose the environmental consequences of building and operating a major capital investment in the Downtown Birmingham and UAB Activity Centers study area in advance of any decision to commit substantial financial or other resources towards its implementation. The DEIS will explore the extent to which study alternatives and alignment options result in environmental impacts and will discuss actions to reduce or eliminate such impacts.

Environmental issues to be examined in the DEIS include impacts to: Community facilities, cultural resources, parklands, traffic operations, parking, transit service and operations, local economy, air quality, noise and vibration, environmental justice populations, potential contaminated sites, and water resources as well as any displacements of residents and businesses. Impacts will be identified for both the construction period and long term operation of the alternatives. The proposed transportation criteria will include transportation, social, economic, and financial measures as required by current federal (NEPA) environmental laws and the implementing regulations of the Council on Environmental Quality and of FTA.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed and the DEIS should be directed to Mr. Darrell Howard at the RPCGB at the address noted in the **ADDRESSES** section above.

V. FTA Procedures

Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, an LPA will be selected and evaluated in the DEIS. The DEIS will be prepared simultaneously with the conceptual engineering for the alternatives, including station and alignment options. The DEIS will address the potential use of federal funds for the proposed action as well as assess the social, economic, environmental, and transportation impacts of the station and alignment options. Station and alignment options will be refined to minimize and mitigate any adverse impacts.

After publication, the DEIS will be available for public and agency review and comment, and a public hearing will be held. Based on the DEIS and comments received, the LPA may be refined, and the RPCGB will further assess the LPA in the Final EIS and will apply for FTA approval to initiate Preliminary Engineering of the LPA.

Issued on: October 19, 2005.

Alexander E. McNeil,

Director, Office of Planning & Program Development.

[FR Doc. 05–21237 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 22783]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CRYSTAL SPIRIT.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22783 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the

comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 25, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22783. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–4357.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CRYSTAL SPIRIT is:

Intended Use: ''Passenger charter for leisure purposes.''

Geographic Region: Alaska.

Dated: October 18, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–21239 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 22784]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DAY DREAMER.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22784 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 25, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2004 22784. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DAY DREAMER is:

Intended Use: ''CHARTERS AND Sail Training.''

Geographic Region: Florida, U.S. Gulf Coast, U.S. East Coast.

Dated: October 18, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–21238 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA–98–4470]

Pipeline Safety: Meetings of the Pipeline Safety Advisory Committees

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of meetings.

SUMMARY: This notice announces public meetings of PHMSA's Technical Pipeline Safety Standards Committee (TPSSC) and Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) to discuss regulatory issues.

DATES: The TPSSC and the THLPSSC will meet in joint sessions on December 13–14, 2005, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The meetings will be held at the L'Enfant Plaza Hotel in Washington, DC at 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For additional information regarding these meetings contact: Cheryl Whetsel at (202) 366–4431; *cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

General Meeting Details

Attendees staying at the hotel must make reservations by 5 p.m., November 18, 2005. The phone number for reservations at the hotel is (202) 484–1000. The hotel will give priority to the Committee members and State Pipeline Safety Representatives for rooms blocked under ''DOT Technical Advisory Committee Meetings''.

Members of the public may make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Cheryl Whetsel, no later than November 21, of the topic and the length of the presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver them to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC

20590–0001. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically by logging onto the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number RSPA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit http://dms.dot.gov.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Cheryl Whetsel at (202) 366–4431 by November 21, 2005.

Background

The TPSSC and the THLPSSC are statutorily mandated advisory committees that make recommendations to PHMSA on proposed safety standards, risk assessments, and safety policies for gas and hazardous liquid pipeline. These advisory committees are established under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committees consist of 15 members—five each representing government, industry, and the public. The TPSSC and the THLPSSC are tasked with determining reasonableness, cost-effectiveness, and practicability of regulatory initiatives.

Federal law requires PHMSA to submit cost-benefit analyses and risk assessment information on each proposed safety standard to the advisory committees. The TPSSC or THLPSSC evaluate the merits of the data and methods used within the analyses, and, when appropriate, vote on all recommendations relating to the cost-benefit analyses. These committees also assist PHMSA with policy and other issues pertaining to pipeline safety.

In addition to the advisory committee meetings, PHMSA will soon publish a separate notice to announce a public meeting on operator qualification regulatory considerations that will be held on December 15, 2005. This public meeting is being scheduled during the same week as the advisory committee meetings to afford members of the advisory committees, State pipeline safety representatives, and the general public the maximum opportunity to attend both the advisory committee meetings and the operator qualification public meeting.

Meeting Topics

Tuesday, December 13 (8:30 a.m. until 5 p.m.)

The day's agenda includes the following topics:

Responding to National Emergencies—Discuss lessons learned by industry and the Department of Transportation in responding to the most recent large-scale transportation emergencies.

- Gas Gathering Lines—Discuss comments received on the supplemental notice of proposed rulemaking and the associated regulatory analysis.
- Hazardous Liquid Gathering Lines—Discuss the regulatory approach to address the statutory requirement to address unregulated liquid gathering lines that could affect unusually sensitive areas.
- Distribution Integrity Management Program (DIMP)—Discuss DIMP team report findings on approaches to managing the integrity of gas distribution systems.
- Excavation Damage Prevention—Discuss hurricane recovery activities with the Common Ground Alliance (CGAs), approaches to enforcement, and program progress among Regional CGAs.
- Operator Qualifications—Discuss conceptual regulatory approaches to strengthen operator qualification programs. A public meeting on this issue will be held December 15, 2005.
- Annual Update of Standards Incorporated by Reference—Committee vote on NPRM that proposes to update the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards.

Wednesday, December 14 (8:30 a.m. until 5 p.m.)

The day's agenda includes the following topics:

- Recommendations on In-Line Inspection Options—Present findings from the public meeting and discuss next steps in enhancing in-line inspection efforts.
- Operator Control Room Issues—Discuss findings of Controller Certification Pilot Program for the Report to Congress, and provide an update on NTSB recommendations to address controller safety issues.
- Integrity Management Program Modifications and Clarifications—Discuss the notice of proposed rulemaking that addresses an API petition to allow more flexibility in scheduling repairs and reassessment intervals of hazardous liquid pipelines.
- Internal Corrosion in Gas Transmission Pipelines—Discuss the notice of proposed rulemaking to address internal corrosion when designing and constructing new and replaced gas transmission pipelines.
- Enforcement—Discuss program strategy and performance goals.
- Liquefied Natural Gas—Discuss PHMSA safety issues addressed in consensus standards and provide an update on the status of Federal Energy Regulatory Commission (FERC) initiatives.
- Reauthorization—Discuss energy and legislative proposals that pertain to pipeline safety.

PHMSA will post more a detailed agenda and any additional information or changes on its Web page (*http://phmsa.dot.gov*) approximately 15 days before the meeting date.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC, on October 20, 2005.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 05–21346 Filed 10–24–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Sidley Austin Brown & Wood LLP on behalf of Norfolk Southern Railway Company (WB610—October 17, 2005) for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–21304 Filed 10–24–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34759]

Mohall Central Railroad, Inc.—Acquisition and Operation Exemption—Rail Line of BNSF Railway Company

Mohall Central Railroad, Inc. (MCR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from BNSF Railway Company approximately 69.15 miles of rail line between milepost 72.9 at Sarles, ND, and milepost 3.75 near Lakota, ND. MCR states that, pursuant to an operating agreement between it and Northern Plains Railroad, Inc. (NPR), NPR will operate the line, and that a track connection between NPR and the acquired line will be constructed near Munich, ND.[1]

MCR certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

Consummation is scheduled to take place on October 18, 2005 (the exemption became effective October 10, 2005, 7 days after filing).

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. 34759, 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 Byron D. Olsen, 1543 Grantham Street, St. Paul, MN 55108–1449.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Dated: October 17, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–21209 Filed 10–24–05; 8:45 am]

BILLING CODE 4915–01–P

[1] Under 49 U.S.C 10902 and the Board's rules at 49 CFR 1150.41, if NPR intends to operate the line, it must file a request with the Board for authority prior to commencing operations. In addition, under 49 U.S.C. 10901, construction authority will be required to build the connecting track.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 25, 2005.

Internal Revenue Service (IRS)

OMB Number: 1545–0016.

Type of Review: Revision.

Title: Treasury International Capital Form BQ–1, ''Report of Customers' U.S. Dollar Claims on Foreigners''.

Form: International Capital Form BQ–1.

Description: Form BQ–1 is required by law and is designed to collect timely information on international portfolio capital movements, including U.S. dollar claims of customers of depository institutions, bank and financial holding companies, brokers and dealers vis-à-vis foreigners. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 909 hours.

OMB Number: 1545–0017.

Type of Review: Revision.

Title: Treasury International Capital Form BC/BC (SA) ''Report of U.S. Dollar Claims of Depository Institutions, Brokers and Dealers on Foreigners''.

Form: International Capital Form BC/BC (SA).

Description: Form BC/BC(SA) is required by law and is designed to collect timely information on international portfolio capital movements, including own U.S. dollar claims of depository institutions, bank and financial holding companies, brokers and dealers vis-à-vis foreigners. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 33,804 hours.

OMB Number: 1545–0018.

Type of Review: Revision.

Title: Treasury International Capital Form BL–2/BL–2(SA) ''Report of Customers' U.S. Dollar Liabilities to Foreigners''.

Form: International Capital Form BL–2/BL–2(SA).

Description: Form BL–2/BL–2(SA) is required by law and is designed to collect timely information on international portfolio capital movements, including U.S. dollar liabilities of customers of depository institutions, bank and financial holding companies, brokers and dealers vis-á-vis foreigners. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 9,000 hours.

OMB Number: 1545–0019.

Type of Review: Revision.

Title: Treasury International Capital Form BL–1/BL–1(SA) ''Report of U.S. Dollar Liabilities of Depository Institutions, Brokers and Dealers to Foreigners''.

Form: International Capital Form BL–1/BL–1(SA).

Description: Form BL–1/BL–1(SA) is required by law and is designed to collect timely information on international portfolio capital movements, including U.S. dollar liabilities of depository institutions, bank and financial holding companies, brokers and dealers vis-á-vis foreigners. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 31,278 hours.

OMB Number: 1545–0020.

Type of Review: Revision.

Title: Treasury International Capital Form BQ–2 ''Part 1—Report of Foreign Currency Liabilities and Claims of Depository Institutions, Brokers and Dealers, and of their Domestic Customers vis-á-vis Foreigners; Part 2—Report of Customers' Foreign Currency Liabilities to Foreigners''.

Form: International Capital Form BQ–2.

Description: Form BQ–2 is required by law and is designed to collect timely information on international portfolio capital movements, including liabilities and claims of depository institutions, bank and financial holding companies, brokers and dealers and their customers' liabilities vis-á-vis foreigners, that are denominated in foreign currencies. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 3,564 hours.

OMB Number: 1545–0024.

Type of Review: Revision.

Title: Treasury International Capital Form CQ–1 ''Report of Financial Liabilities to and Financial Claims on Foreign Residents'' and Form CQ–2 ''Report of Commercial Liabilities to, and Commercial Claims on Unaffiliated Foreign Residents''.

Form: International Capital Form CQ1 and CQ–2.

Description: Forms CQ–1 and CQ–2 are required by law to collect timely information on international portfolio capital movements, including data on financial and commercial liabilities to, and claims on unaffiliated foreigners and certain affiliated foreigners held by non-banking enterprises in the U.S. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 5,746 hours.

OMB Number: 1545–0149.

Type of Review: Extension.

Title: 31 CFR Part 128 Reporting of International Capital and Foreign Currency Transactions and Positions.

Description: 31 CFR Part 128 establishes general guidelines for reporting on U.S. claims on and liabilities to, foreigners; on transactions in securities with foreigners; and on monetary reserves of the U.S. It also establishes guidelines for reporting on the foreign currency transactions of U.S. persons. It includes a recordkeeping requirement in section 128.5.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 4,950 hours.

OMB Number: 1545–0189.

Type of Review: Extension.

Title: Treasury International Capital Form BQ–3 ''Report of Maturities of Selected Liabilities of Depository Institutions, Brokers and Dealers to Foreigners.

Form: International Capital Form BQ–3.

Description: Form BQ–3 is required by law and is designed to collect timely information on international portfolio capital movements, including maturities of selected U.S. dollar and foreign currency liabilities of depository institutions, bank and financial holding companies, brokers and dealers to foreigners. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position and in the formulation of U.S. international financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1,312 hours.

Clearance Officer: Dwight Wolkow, (202) 622–1276, Department of Treasury, Room 4410–1440NYA, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–21307 Filed 10–24–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Announcement 2005–XX

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Announcement 2005–XX, Management S Corporation/ESOP Settlement Initiative.

DATES: Written comments should be received on or before December 27, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Management S Corporation/ESOP Settlement Initiative.

OMB Number: 1545–1958.

Notice Number: Announcement 2005–XX.

Abstract: This announcement is an enforcement initiative to resolve certain cases where taxpayers have attempted to use an S corporation and an arrangement purported to be an ESOP to improperly exclude the income of a related business from taxable income.

Current Actions: There are no changes being made to the announcement at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 2000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration

of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 18, 2005.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E5–5871 Filed 10–24–05; 8:45am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1127

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1127, Application For Extension of Time For Payment of Tax.

DATES: Written comments should be received on or before December 27, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application For Extension of Time For Payment of Tax.

OMB Number: 1545–1961.

Form Number: Form 1127.

Abstract: Form 1127 is used by taxpayers to request an extension of time to pay taxes. The conditions under which extensions may be granted are stated under Section 6161 of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 25 min.

Estimated Total Annual Burden Hours: 833.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 18, 2005.

Larnice Mack,

IRS Reports Clearance Officer.

[FR Doc. E5–5872 Filed 10–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Applications for the IRS Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS).

ACTION: Notice.

SUMMARY: The Internal Revenue Service, Tax Exempt and Government Entities Division, is requesting applications for membership to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Applications will be accepted for the following vacancies which will occur in May 2006: Two (2) employee plans; two (2) exempt organizations; two (2) Indian tribal governments; one (1) tax exempt bonds, and one (1) Federal, state and local governments. To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise.

Due Date: Written applications or nominations must be received on or before November 25, 2005.

Application: Applicants may use the ACT Application Form on the IRS Web site (*http://www.irs.gov*) or may send an application by letter with the following information: Name; Other Name(s) Used and Date(s) (required for FBI check); Date of Birth (required for FBI check); City and State of Birth (required for FBI check); Current Address; Telephone and Fax Numbers; and E-mail address, if any. Applications should also describe and document the proposed member's qualifications for membership on the ACT. Applicants should also specify the vacancy for which they wish to be considered.

ADDRESSES: Send all applications and nominations to: Steven Pyrek; Director, TE/GE Communications and Liaison; 1111 Constitution Ave., NW.—SE:T:CL Penn Bldg; Washington, DC 20224; Fax: (202) 283–9956 (not a toll-free number); e-mail: *steve.j.pyrek@irs.gov*.

FOR FURTHER INFORMATION, CONTACT: Rick Trevino, (202) 283–9963 (not a toll-free number), or by e-mail at *rick.trevino@irs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and Federal, state, local, and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements. ACT members shall be appointed by the Secretary of the Treasury and shall serve for two-year terms. Terms can be extended in one-year increments, not to exceed two years. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C. 5703.

The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax-exempt bonds, and Federal, state, local or Indian tribal governments, to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for membership on the ACT. Nominations should also specify the vacancy for which they wish to be considered. The Secretary seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and Federal, state, local or Indian tribal governments.

Nominees must go through a clearance process before selection by the Secretary of the Treasury. In accordance with Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and a Federal Bureau of Investigation criminal and subversive name check and security clearance.

Dated: October 19, 2005.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. E5–5873 Filed 10–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0104]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to support a claim for disability benefits based on an accidental injury.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 27, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0104'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Accidental Injury in Support of Claim for Compensation or Pension, VA Form 21–4176.

OMB Control Number: 2900–0104.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–4176 is used to determine a veteran's eligibility for disability benefits based on an accidental injury that he or she incurred while in the line of duty. VA uses the information collected to determine whether the injury was the result of a willful misconduct by the veteran.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,204.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,408.

Dated: October 12, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5869 Filed 10–24–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521) this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 25, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management

Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0016.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0016'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Extension of currently approved collection.

Abstract: Policyholder's complete VA Form 29–357 to claim disability insurance on National Service Life Insurance and United States Government Life Insurance policies. The information collected is used to determine the policyholder's eligibility for disability insurance benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 9, 2005 at pages 6925–6926.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden Per Respondent: 1 hour and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

Estimated Number of Respondents: 1,200.

Dated: October 13, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–5870 Filed 10–24–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Wednesday, November 30 and Thursday, December 1, 2005, from 8 a.m. to 5 p.m. each day. The meeting will be held at the Hilton Tampa Airport Westshore, 2225 N. Lois Avenue, Tampa, Florida 33607. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of its analyses and discussions, the Committee may make recommendations to the Secretary concerning the relationship of certain diseases with exposure to ionizing radiation. On November 30, there will be a presentation by VA's Public Health and Environmental Hazards Office. The December 1 session will include planning future Committee activities and assignment of tasks among the members.

Those who wish to attend should contact Ms. Bernice Green of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273–7210, or by fax at (202) 275–1728. Members of the public may submit written questions or prepared statements in advance for the Committees review. Statements should be sent to Ms. Green's attention at least 5 days prior to the meeting at the address show above. Those who submit material may be asked to clarify it prior to its consideration by the Committee.

An open forum for verbal statements from the public will also be available for 20 minutes during the morning and 20 minutes in the afternoon each day. Each person who wishes to make a verbal statement before the Committee will be accommodated on a first-come, first-served basis and will be provided three (3) minutes to present a statement.

Dated: October 19, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–21313 Filed 10–24–05; 8:45am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council willhold a meeting on Tuesday, November 8, 2005, at the Hamilton Crowne Plaza Hotel, 14th & K streets, NW., Washington, DC. The meeting will convene at 8:30 a.m. and conclude by 3 p.m. The meeting is open to the public. The purpose of the Council is to provide external advice and review for VA's research mission.

The agenda will include a review of and discussion about the Council's annual report for 2005, an overview of research, education, and clinical centers, and an update on deployment health and Gulf War research.

Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Karen Scott, Designated Federal Officer, at (202) 254–0200. Oral comments from the public will not be accepted at the meeting. Written statements or comments should be transmitted electronically to *karen.scott@hq.med.va.gov* or mailed to Ms. Scott at Department of Veterans Affairs, Office of Research and Development (12C), 810 Vermont Ave., NW., Washington, DC 20420.

Dated: October 14, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–21316 Filed 10–24–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Prosthetics and Special Disabilities Programs will meet on November 16–17, 2005, at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. On November 16, the session will be held in the Omar Bradley Conference Room from 8:30 a.m. to 4:30 p.m. and on November 17, the session will be held in Room 830 from 8:30 a.m. to 12 noon. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of the use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

On the morning of November 16, the Committee will be briefed by the Chief Consultant, Rehabilitation Strategic Healthcare Group, and Director, Physical Medicine and Rehabilitation. In the afternoon, the Committee will be briefed by the directors of Ophthalmology and Optometry and Chief Prosthetics and Clinical Logistics Officer. On the morning of November 17, the Committee will be briefed by the Chief Research and Development Officer.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Ms. Cynthia Wade, Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation Strategic Healthcare Group (117), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Wade at (202) 273–8485.

Dated: October 19, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–21315 Filed 10–24–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on Wednesday, November 16, 2005. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the under Secretary for Health on the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. The agenda for the meeting will include discussions on VA's role in national disaster relief, national response to influenza pandemic, information technology reorganization, budget, and the impact of obesity and diabetes on the military and veterans populations.

Any member of the public wishing to attend should contact Ms. Juanita Leslie, Office of Administrative Operations (10B2), Veterans Health Administration, Department of Veterans Affairs at (202) 273–5882. No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be submitted to Juanita Leslie before the meeting or within 10 days after the meeting.

Dated: October 17, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–21314 Filed 10–24–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 70, No. 205
Tuesday, October 25, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 430 and 431

RIN 1904–AB54

Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment

Correction

In rule document 05–20701 beginning on page 60407 in the issue of Tuesday, October 18, 2005, make the following corrections:

§ 430.32 [Corrected]

1. On page 60413, in §430.32(u), in the second table, under the first column, in the 12th line, ''Lamp Power>20'' should read ''Lamp Power≥20''.

§ 431.97 [Corrected]

2. On page 60415, in §431.97(b), in the table, in the fourth column, the heading ''Efficiency level'' should read ''Efficiency level†''.

3. On the same page, in the same section, in the same table, in the same column, in the fifth entry, ''EER = 1 1.0*'' should read ''EER = 11.0*''.

4. On the same page, in the same section, in the same table, in the third footnote, ''*EER'' should read ''†EER''.

§ 431.136 [Corrected]

5. On page 60416, in §431.136, the table is corrected to read as follows:

Equipment type	Type of cooling	Harvest rate (lbs ice/24 hours)	Maximum energy use (kWh/100 lbs ice)	Maximum condenser water use * (gal/100 lbs ice)
Ice Making Head	Water	<500	7.80–0.0055H	200–0.022H.
Ice Making Head	Water	≥500 and <1436	5.58–0.0011H	200–0.022H.
Ice Making Head	Water	≥1436	4.0	200–0.022H.
Ice Making Head	Air	<450	10.26–0.0086H.	Not applicable.
Ice Making Head	Air	≥450	6.89–0.0011H	Not applicable.
Remote Condensing (but not remote compressor).	Air	<1000	8.85–0.0038H	Not applicable.
Remote Condensing (but not remote compressor).	Air	≥1000	5.1	Not applicable.
Remote Condensing and Remote Compressor.	Air	<934	8.85–0.0038H	Not applicable.
Remote Condensing and Remote Compressor.	Air	≥934	5.3	Not applicable.
Self Contained	Water	<200	11. 40–0.019H	191–0.0315H.
Self Contained	Water	≥200	7.6	191–0.0315H.
Self Contained	Air	<175	18.0–0.0469H	Not applicable.
Self Contained	Air	≥175	9.8	Not applicable.

H Harvest rate in pounds per 24 hours.
* Water use is for the condenser only and does not include potable water used to make ice.

[FR Doc. C5–20701 Filed 10–24–05; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 25, 2005

Part II

Securities and Exchange Commission

17 CFR Part 241

Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–52635; File No. S7–09–05]

Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed interpretation; request for comment.

SUMMARY: The Securities and Exchange Commission is publishing for comment this interpretive release with respect to client commission practices under Section 28(e) of the Securities Exchange Act of 1934 (''Exchange Act''). Section 28(e) of the Exchange Act establishes a safe harbor that allows money managers to use client funds to purchase ''brokerage and research services'' for their managed accounts under certain circumstances without breaching their fiduciary duties to clients. In light of the Commission's experience with Section 28(e) and in recognition of changing market conditions, the Commission is proposing to provide further guidance on money managers' use of client assets to pay for research and brokerage services under Section 28(e) of the Exchange Act. This release also reiterates the statutory requirement that money managers must make a good faith determination that commissions paid are reasonable in relation to the value of the products and services provided by broker-dealers and that broker-dealers must be financially responsible for the brokerage and research products that they provide to money managers and must be involved in ''effecting'' the trade.

DATES: Comments should be received on or before November 25, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/interp.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–09–05 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number S7–09–05. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/interp.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jo Anne Swindler, Assistant Director, at (202) 551–5750; Patrick M. Joyce, Special Counsel, at (202) 551–5758; Stanley C. Macel, IV, Special Counsel, at (202) 551–5755; or Marlon Quintanilla Paz, Special Counsel, at (202) 551–5756, in the Office of Enforcement Liaison and Institutional Trading, Division of Market Regulation, United States Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

Section 28(e) of the Exchange Act establishes a safe harbor that allows money managers to use client funds to purchase ''brokerage and research services'' for their managed accounts under certain circumstances without breaching their fiduciary duties to clients. In this release, the Commission is proposing to issue interpretive guidance with respect to the safe harbor, with the particular goal of clarifying the scope of ''brokerage and research services'' in the light of evolving technologies and industry practices. The Commission invites public comment on its proposed interpretive guidance.

Fiduciary principles require money managers to seek the best execution for client trades, and limit money managers from using client assets for their own benefit.[1] Use of client commissions to pay for research and brokerage services presents money managers with significant conflicts of interest, and may give incentives for managers to disregard their best execution obligations when directing orders to obtain client commission services as well as to trade client securities inappropriately in order to earn credits for client commission services.[2] Recognizing the value of research in managing client accounts, however, Congress enacted Section 28(e)[3] of the Securities Exchange Act of 1934 (''Exchange Act'')[4] to provide a safe harbor that protects money managers from liability for a breach of fiduciary duty solely on the basis that they paid more than the lowest commission rate in order to receive ''brokerage and research services'' provided by a broker-dealer if the managers determined in good faith that the amount of the commission was reasonable in relation to the value of the brokerage and research services received.[5]

As discussed below in Part II, over the past thirty years, the Commission has issued several releases interpreting the Section 28(e) safe harbor. In 1998, the Commission published a report of its Office of Compliance Inspections and Examinations (''OCIE'') detailing a staff review of client commission practices at

[1] An adviser has a fundamental obligation under the Investment Advisers Act of 1940 (''Advisers Act'') [15 U.S.C. 80b–1] and state law, to act in the best interest of his client. *See SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 189–191 (1963). ''As a fiduciary, a money manager has an obligation to obtain 'best execution' of clients' transactions under the circumstances of the particular transaction.'' Exchange Act Release No. 23170 (Apr. 23, 1986), 51 FR 16004, 16011 (Apr. 30, 1986) (''1986 Release''). *See also Delaware Management Co.,* 43 SEC 392, 396 (1967). The fundamental obligation of the adviser to act in the best interest of his client also generally precludes the adviser from using client assets for the adviser's own benefit or the benefit of other clients, at least without client consent. *See* Restatement (Second) of Trusts Section 170 cmt. a, Section 216 (1959).

[2] Exchange Act Release No. 35375 (Feb. 14, 1995), 60 FR 9750, 9751 (Feb. 21, 1995) (''1995 Rule Proposal'') (the Commission took no further action on this proposal). *See also Sage Advisory Services LLC*, Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001) (Commission charged that adviser churned advised account to generate client commission credits to pay personal operating expenses and failed to seek to obtain best execution by causing account to pay commissions twice the rate the same broker charged other customers for comparable services).

To avoid confusion that may arise over the usage of the phrase ''soft dollars,'' in this release, the Commission uses the term ''client commission'' practices or arrangements to refer to practices under Section 28(e).

[3] 15 U.S.C. 78bb(e).

[4] 15 U.S.C. 78a.

[5] *See* Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97, 161–62 (1975).

Congressional enactment of Section 28(e) did not alter the money manager's duty to seek best execution. *See* 1986 Release, 51 FR at 16011. The directors of an investment company have a continuing fiduciary duty to oversee the company's brokerage practices. *See* Investment Company Act Release No. 11662 (Mar. 4, 1981), 46 FR 16012 (Mar. 10, 1981). In addition, the directors have an obligation in connection with their review of the fund's investment advisory contract to review the adviser's compensation, including any ''soft dollar'' benefits the adviser may receive from fund brokerage. *See* 1986 Release, 51 FR at 16010.

broker-dealers and investment advisers. The Commission also has brought enforcement actions involving client commission practices.[6]

In light of the Commission's experience with Section 28(e) and in recognition of changing market conditions, the Commission is proposing to provide further guidance on money managers' use of client assets to pay for research and brokerage services under Section 28(e) of the Exchange Act.[7] This release would interpret the scope of the safe harbor as follows:

- Eligibility of brokerage and research services for safe harbor protection is governed by the criteria in Section 28(e)(3),[8] consistent with the Commission's 1986 ''lawful and appropriate assistance'' standard.
- ''Research services'' are restricted to ''advice,'' ''analyses,'' and ''reports'' within the meaning of Section 28(e)(3).
- Physical items, such as computer hardware, which do not reflect the expression of reasoning or knowledge relating to the subject matter identified in the statute, are outside the safe harbor.
- Market, financial, economic, and similar data would be eligible for the safe harbor.
- ''Brokerage services'' within the safe harbor are those products and services that relate to the execution of the trade from the point at which the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution, through the point at which funds or securities are delivered or credited to the advised account.
- Mixed-use items must be reasonably allocated between eligible and ineligible uses, and the allocation must be documented so as to enable the money manager to make the required good faith determination of the reasonableness of commissions in relation to the value of brokerage and research services.

This release reiterates the statutory requirement that money managers must make a good faith determination that commissions paid are reasonable in relation to the value of the products and services provided by broker-dealers in connection with the managers' responsibilities to the advisory accounts for which the managers exercise investment discretion.

Finally, the release reiterates that under Section 28(e), broker-dealers must be financially responsible for the brokerage and research products that they provide to money managers, and they must be involved in ''effecting'' the trade.

II. ''Brokerage and Research Services'' Under Section 28(e) of the Exchange Act

A. Origins of the Section 28(e) Safe Harbor

In the early 1970s, the Commission studied whether to require unfixing commission rates on national exchanges, which had been fixed by custom and regulation since the founding of the New York Stock Exchange nearly two hundred years earlier.[9] At the same time, the House and Senate began to consider whether to eliminate fixed commission rates legislatively.[10] The Commission adopted Rule 19b–3 under the Exchange Act,[11] which ended fixed commission rates on national securities exchanges effective May 1, 1975.[12] Just one month later, Congress passed legislation unfixing commission rates as part of the Securities Acts Amendments of 1975 (''1975 Amendments'').[13]

In the era of fixed rates, when broker-dealers could not compete on the basis of the commissions that they could charge for executing orders, they competed on the basis of services including non-execution services that they could offer.[14] Indeed, broker-dealers had long been accustomed to attracting order execution business from institutional money managers by offering them brokerage functions and research reports to distinguish their services from those of their competitors.[15] As the end of the fixed-rate era drew near, however, money managers and broker-dealers alike questioned how competition over commission rates would disrupt these practices. Institutional money managers expressed concern that, in an environment of competitive commission rates, they would be forced to allocate brokerage solely on the basis of lowest execution costs, or that paying more than the lowest commission rate would be deemed a breach of fiduciary duty, and that useful research might become more difficult to obtain.[16] Broker-dealers, which were accustomed to producing proprietary ''Street'' research, expressed concern that they could no longer be compensated in commissions for their work product if orders were routed to broker-dealers that provided execution-only service at lower rates.[17]

In an effort to address the industry's uncertainties about competitive commission rates, Congress included a safe harbor in the 1975 Amendments, codified as Section 28(e) of the Exchange Act.[18] The safe harbor provides generally that a money manager does not breach his fiduciary duties under state or federal law solely on the basis that the money manager has paid brokerage commissions to a broker-dealer for effecting securities transactions in excess of the amount

[6] *See infra* note 25.

[7] 15 U.S.C. 78bb(e). The Commission also is considering whether at a later time to propose requirements for disclosure and recordkeeping of client commission arrangements.

In 2004, Chairman William H. Donaldson created an agency-wide Task Force on Soft Dollars, which conducted a thorough review of client commission practices.

[8] 15 U.S.C. 78bb(e)(3).

[9] *See* U.S. Securities and Exchange Commission, *Institutional Investor Study Report,* H.R. Doc. No. 64, 92d Cong., 1st Sess., Vol. 4, at 2206 (1971). *See also* U.S. Securities and Exchange Commission, Special Study of Securities Markets, H.R. Doc. No. 88–95, pt. 2, at 323 (1963) (''Special Study'').

[10] *See generally* Senate Comm. on Banking, Housing and Urban Affairs, Securities Industry Study Report of the Subcommittee on Securities, S. Doc. No. 93–13 (1973).

[11] 17 CFR 240.19b–3. Rule 19b–3 was codified in certain respects by Section 6(e)(1) of the Exchange Act [15 U.S.C. 78f(e)(1)], which was enacted as part of the Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97, 107–08 (1975). *See also* Exchange Act Release No. 26180 (Oct. 14, 1988), 53 FR 41205 (Oct. 20, 1988) (rescinding Rule 19b–3).

[12] *See* Exchange Act Release No. 11203 (Jan. 23, 1975), 40 FR 7394 (Feb. 20, 1975).

[13] *See* Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97, 107–08 (1975) (enacting Section 6(e)(1) of the Exchange Act [15 U.S.C. 78f(e)(1)]). *See generally* Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 69 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 247; House Comm. on Interstate and Foreign Commerce, Securities Reform Act of 1975, H.R. Rep. No. 94–123 (1975); Joint Explanatory Statement of the Comm. of Conference, Securities Acts Amendments of 1975, H.R. Conf. Rep. No. 94–229, at 108 (1975), *reprinted in* 1975 U.S.C.C.A.N. 321, 338.

[14] *See* Exchange Act Release No. 12251 (Mar. 24, 1976), 41 FR 13678, 13679 (Mar. 31, 1976) (''1976 Release'').

[15] *See* Special Study, H.R. Doc. No. 88–95, pt. 2, at 321.

[16] *See* 1995 Rule Proposal, 60 FR at 9750; Report of Investigation in the Matter of Investment Information, Inc. Relating to the Activities of Certain Investment Advisers, Banks, and Broker-Dealers, Exchange Act Release No. 16679, 19 SEC Docket 926, 931 (Mar. 19, 1980) (''III Report''); 1976 Release, 41 FR at 13679.

[17] *Securities Acts Amendments of 1975: Hearings on S. 249 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing, and Urban Affairs,* 94th Cong., 1st Sess. 329–31 (1975) (''S. 249 Hearings'') (Combined statement of Baker, Weeks & Co., Inc., Donaldson, Lufkin & Jenrette Sec. Corp., Mitchell, Hutchins Inc., and Oppenheimer & Co.).

[18] *See* Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97, 161–62 (1975). Section 28(e) [15 U.S.C. 78bb(e)] governs the conduct of all persons who exercise investment discretion with respect to an account, including investment advisers, mutual fund portfolio managers, fiduciaries of bank trust funds, and money managers of pension plans and hedge funds. The scope of Section 28(e) therefore extends to entities that are within the jurisdiction of the Board of Governors of the Federal Reserve, the Office of the Comptroller of the Currency, the Department of Labor, and the Office of Thrift Supervision.

another broker-dealer would have charged, if the money manager determines in good faith that the amount of the commissions paid is reasonable in relation to the value of the brokerage and research services provided by such broker-dealer.

As fiduciaries, money managers are obligated to act in the best interest of their clients, and cannot use client assets (including client commissions) to benefit themselves, absent client consent.[19] Money managers who obtain brokerage and research services with client commissions do not have to purchase those services with their own funds, which creates a conflict of interest for the money managers. Section 28(e) addresses these conflicts by permitting money managers to pay higher commissions on behalf of a client than otherwise are available to obtain brokerage and research services, if managers make their good faith determination regarding the reasonableness of commissions paid.[20] Conduct not protected by Section 28(e) may constitute a breach of fiduciary duty as well as a violation of the federal securities laws, particularly the Investment Advisers Act of 1940[21] and the Investment Company Act of 1940 (''Investment Company Act''),[22] and the Employee Retirement Income Security Act of 1974 (''ERISA'').[23] In particular, money managers of registered investment companies and pension funds subject to ERISA may violate Section 17(e)(1) of the Investment Company Act or ERISA, respectively, unless they satisfy the requirements of the Section 28(e) safe harbor.[24]

B. Previous Commission Guidance on the Scope of Section 28(e)

The Commission has issued three interpretive releases under Section 28(e) and a report pursuant to Section 21(a) of the Exchange Act that addresses issues associated with Section 28(e).[25] We discuss these below.

1. 1976 Release

In 1976, the Commission issued an interpretive release stating that the safe harbor did not protect ''products and services which are readily and customarily available and offered to the general public on a commercial basis.''[26] The Commission identified these products and services as examples of excluded items: ''newspapers, magazines and periodicals, directories, computer facilities and software, government publications, electronic calculators, quotation equipment, office equipment, airline tickets, office furniture and business supplies.''[27]

In that release, the Commission also admonished money managers not to direct broker-dealers to make ''give-up'' payments, in which the money manager asked the broker-dealer, retained to effect a transaction for the account of a client, to ''give up'' part of the commission negotiated by the broker-dealer and the money manager to another broker-dealer designated by the money manager for whom the executing or clearing broker is not a normal and legitimate correspondent. The Commission stated that in order to be within the definition of ''brokerage and research services'' under Section 28(e), ''it was intended * * * that a research service paid for in commissions by accounts under management be provided by the particular broker which executed the transactions for those accounts.''[28] At the same time, the Commission acknowledged the value of third-party research by stating that, ''under appropriate circumstances, [Section 28(e) might] be applicable to situations where a broker provides a money manager with research produced by third parties.''[29] The Commission emphasized that the money manager ''should be prepared to demonstrate the required good faith determination in connection with the transaction.''[30]

2. Report in the Matter of Investment Information, Inc.

In 1980, the Commission issued a report pursuant to Section 21(a) of the

[19] *See supra* note 1.

[20] The Commission has interpreted Section 28(e) as encompassing client commissions on agency transactions and fees on certain riskless principal transactions that are reported under NASD trade reporting rules. Exchange Act Release No. 45194 (Dec. 27, 2001), 67 FR 6, 7 (Jan. 2, 2002) (''2001 Release''). Managers may not use client funds to obtain brokerage and research services under the safe harbor in connection with fixed income trades that are not executed on an agency basis, principal trades (except for certain riskless principal trades), or other instruments traded net with no explicit commissions.

Further, directed brokerage transactions (whether to recapture a portion of the commission for the client or to pay client expenses such as sub-transfer agent fees, consultants' fees, or for administrative services) ''clearly do not fall within the safe harbor of Section 28(e)'' because ''[t]he safe harbor is available only to persons who are exercising investment discretion.'' 1986 Release, 51 FR at 16011. ''A pension plan sponsor that has retained a money manager to make investment decisions, as is the case in directed brokerage arrangements, is not exercising investment discretion.'' *Id.* Similarly, a mutual fund that has retained a money manager to make investment decisions is not exercising investment discretion. Unlike client commission arrangements that raise conflict of interest concerns addressed by Section 28(e), directed brokerage arrangements do not raise these concerns because they typically involve use of a fund's commission dollars to obtain services that directly and exclusively benefit the fund. *See* Payment for Investment Company Services with Brokerage Commissions, Securities Act Release No. 7197 (July 21, 1995), 60 FR 38918 (July 28, 1995). The Commission has recently prohibited funds from using brokerage to pay for distribution. *See* Investment Company Act Release No. 26591 (Sept. 2, 2004), 69 FR 54728 (Sept. 9, 2004).

[21] 15 U.S.C. 80b–1. *See* 1986 Release, 51 FR at 16008–09 (discussing the principal provisions of the Advisers Act and rules and forms thereunder that impose disclosure and other obligations on investment advisers and related persons).

[22] 15 U.S.C. 80a–1. *See* 1986 Release, 51 FR at 16009 (discussing the principal provisions of the Investment Company Act and rules and forms thereunder that impose disclosure and other obligations on investment advisers of registered investment companies and related persons).

[23] Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001. *See also Statement of Policies Concerning Soft Dollar and Directed Commission Arrangements,* ERISA Technical Release No. 86–1, [1986–87 Decisions] Fed. Sec. L. Rep. ¶ 84,009 (May 22, 1986).

[24] Section 17(e)(1) of the Investment Company Act [15 U.S.C. 80a–17(e)(1)] generally makes it unlawful for any affiliated person of a registered investment company to receive any compensation for the purchase or sale of any property to or for the investment company when that person is acting as an agent for the company other than in the course of that person's business as a broker-dealer. Essentially, Section 17(e)(1) may be violated if an affiliated person of a registered investment company, such as an adviser, receives compensation for the purchase or sale of property to or from the investment company. Absent the protection of Section 28(e), an investment adviser's receipt of compensation under a client commission arrangement for the purchase or sale of any property, including securities, to or for the investment company may constitute a violation of Section 17(e)(1). *See U.S.* v. *Deutsch,* 451 F.2d 98, 110–11 (2d Cir. 1971), *cert. denied,* 404 U.S. 1019 (1972). If a client commission arrangement is not consistent with Section 28(e), disclosure of the arrangement would not cure any Section 17(e)(1) violation. *See* 1986 Release, 51 FR at 16010 n.55.

[25] *See* 2001 Release; 1986 Release; 1976 Release; III Report. In addition, the Commission has charged money managers and broker-dealers with violations of the federal securities laws in circumstances in which they did not act within the safe harbor and defrauded investors. *See, e.g., Portfolio Advisory Services, LLC, and Cedd L. Moses,* Advisers Act Release No. 2038, 77 SEC Docket 2759–31 (June 20, 2002); *Dawson-Samberg Capital Management, Inc. and Judith A. Mack,* Advisers Act Release No. 1889, 54 SEC 786 (Aug. 3, 2000); *Founders Asset Management LLC and Bjorn K. Borgen,* Advisers Act Release No. 1879, 54 SEC 762 (June 15, 2000); *Marvin & Palmer Associates, Inc., et al.,* Advisers Act Release No. 1841, 70 SEC Docket 1643 (Sept. 30, 1999); *Fleet Investment Advisors, Inc.,* Advisers Act Release No. 1821, 70 SEC Docket 1217 (Sept. 9, 1999); *Republic New York Sec. Corp. and James Edward Sweeney,* Exchange Act Release No. 41036, 53 SEC 1283 (Feb. 10, 1999); *SEC* v. *Sweeney Capital Management, Inc.,* Litig. Release No. 15664, 66 SEC Docket 1613 (Mar. 10, 1998), 1999 U.S. Dist. LEXIS 22298 (1999) (order granting permanent injunction and other relief); *Renaissance Capital Advisers, Inc.,* Advisers Act Release No. 1688, 66 SEC Docket 408 (Dec. 22, 1997); *Oakwood Counselors, Inc.,* Advisers Act Release No. 1614, 63 SEC Docket 2034 (Feb. 11, 1997); *S Squared Technology Corp.,* Advisers Act Release No. 1575, 62 SEC Docket 1446 (Aug. 7, 1996); *SEC* v. *Galleon Capital Mgmt.,* Litig. Release No. 14315, 57 SEC Docket 2593 (Nov. 1, 1994).

[26] 1976 Release, 41 FR at 13678.

[27] *Id.*

[28] *Id.* at 13679.

[29] *Id.*

[30] *Id.*

Exchange Act following an investigation of Investment Information, Inc.''s (''III'') client commission arrangements (''III Report'').[31] III managed the client commission programs of money managers. Typically, under these arrangements, the money manager directed brokerage transactions to broker-dealers that III designated. The broker-dealers, who provided execution services only, retained half of each commission and remitted the balance to III. III retained a fee (for ''services'' that III provided to money managers, ostensibly for managing the client commission accounts) and credited a portion of its commission to the money manager's account. The money manager could either recapture the credited amount (*i.e.,* receive cash) for the benefit of his client or use the credit to purchase research services.[32] The money managers made the arrangements for acquiring the research services directly with the service vendors, and III simply paid the bills for the services as the money managers requested. The executing broker-dealers were unaware of the specific services the money managers acquired from the vendors. III was not a registered broker-dealer, and it did not perform any kind of brokerage function in the securities transactions.

The Commission found that these arrangements did not fall within Section 28(e) of the Exchange Act because the broker-dealers that were ''effecting'' the transactions ''in no significant sense provided the money managers with research services.'' [33] They only executed the transactions and paid a portion of the commissions to III. The broker-dealers were not aware of the specific services that the managers acquired and did not pay the bills for these services. The Commission concluded that, although Section 28(e) does not require a broker-dealer to produce research services ''in-house,'' the services must nevertheless be ''provided by'' the broker-dealers. The Commission found that a broker-dealer is not providing research services when it pays obligations the money manager owes to a third party. The Commission indicated that, consistent with Section 28(e), broker-dealers could arrange to have the third-party research provided directly to the money manager, with the payment obligation falling on the broker-dealer.[34]

3. 1986 Release

Following a staff examination of client commission practices in 1984–1985, the Commission concluded that the 1976 standard was ''difficult to apply and unduly restrictive in some circumstances,'' particularly as the types of research products and their method of delivery had proliferated and become more complex.[35] The Commission expressed concern that ''uncertainty about the standard may have impeded money managers from obtaining, for commission dollars, goods and services'' that they believed were important to making investment decisions.[36]

The Commission withdrew the 1976 standard and construed the safe harbor to be available to research services that satisfy the statute's definition of ''brokerage and research services'' in Section 28(e)(3) and provide ''lawful and appropriate assistance to the money manager in the performance of his investment decision-making responsibilities.'' [37] We concluded that a product or service that was readily and customarily available and offered to the general public on a commercial basis nevertheless could constitute research. The 1986 Release also re-affirmed that, under appropriate circumstances, money managers may use client commissions to obtain third-party research (*i.e.*, research produced by someone other than the executing broker-dealer).[38] The 1986 Release also emphasized the importance of written disclosure of client commission arrangements to clients and reiterated a money manager's duty to seek best execution.

The 1986 Release also introduced the concept of ''mixed use.'' In many cases, a product or service obtained using client commissions may serve functions that are not related to the investment decision-making process, such as accounting or marketing. Management information services, which may integrate trading, execution, accounting, recordkeeping, and other administrative matters such as measuring the performance of accounts, were noted as an example of a product that may have a mixed use. The Commission indicated that where a product has a mixed use, an investment manager should make a reasonable allocation of the cost of the product according to its use, and should keep adequate books and records concerning the allocations.[39] The Commission also noted that the allocation decision itself poses a conflict of interest for the money manager that should be disclosed to the client. In the 1986 Release, the Commission stated that a money manager may use client commissions pursuant to Section 28(e) to pay for the portion of a service or specific component that assists him in the investment decision-making process, but he cannot use client commissions to pay for that portion of a service that provides him administrative assistance.[40]

The 1986 Release also addressed third-party research. Citing to the III Report, the Commission reaffirmed its view that, ''while a broker may under appropriate circumstances arrange to have research materials or services produced by a third party, it is not 'providing' such research services when it pays obligations incurred by the money manager to the third party.'' [41] In the III Report, the Commission found that the money managers and the research vendors, rather than the broker-dealers, had made all of the arrangements for acquiring the services.[42]

4. 2001 Release

Until 2001, the Commission interpreted Section 28(e) to be available only for research and brokerage services obtained in relation to commissions paid to a broker-dealer acting in an ''agency'' capacity.[43] That interpretation meant that money managers could not rely on the safe harbor for research and brokerage services obtained in relation to fees charged by market makers when they executed transactions in a ''principal'' capacity. The Commission interpreted the term ''commission'' in Section 28(e) in this fashion because, in the Commission's view, fees on principal transactions were not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees were reasonable in relation to the value of research and brokerage services received.[44]

In 2001, the Nasdaq Stock Market asked the Commission to reconsider this interpretation of Section 28(e) to apply

[31] *See* III Report, 19 SEC Docket at 926.

[32] Applying the 1976 standard, the Commission found that certain services received by some participating money managers were not research services because these services were readily and customarily available and offered to the general public on a commercial basis. These included such items as periodicals, newspapers, quotation equipment, and general computer services. *See* III Report, 19 SEC Docket at 931 n.17.

[33] *Id.* at 931–32.

[34] *Id.* at 932.

[35] 1986 Release, 51 FR at 16005.

[36] *Id.* at 16005–06.

[37] *Id.* at 16006.

[38] *Id.* at 16007.

[39] *Id.* at 16006.

[40] *Id.*

[41] *Id.*

[42] *Id.* at 16007.

[43] *See* 2001 Release, 67 FR at 6; 1995 Rule Proposal, 60 FR at 9751 n.10; Investment Company Act Release No. 20472 (Aug. 11, 1994), 59 FR 42187, 42188 n.3 (Aug. 17, 1994).

[44] 2001 Release, 67 FR at 7.

also to research and brokerage services obtained in relation to fully and separately disclosed fees on certain riskless principal transactions effected by National Association of Securities Dealers, Inc. (''NASD'') members and reported under NASD trade reporting rules.[45] Based on required disclosure of fees under confirmation rules and reporting of the trade under NASD rules, the Commission determined that the money manager could make the necessary determination of the reasonableness of these charges under Section 28(e). The Commission therefore modified its interpretation of ''commission'' for purposes of the Section 28(e) safe harbor to encompass fees paid for riskless principal transactions in which both legs are executed at the same price and the transactions are reported under the NASD's trade reporting rules.[46]

C. 1998 Office of Compliance Inspections and Examinations (''OCIE'') Report

In 1998, after OCIE conducted examinations of approximately 355 broker-dealers, advisers, and funds, the Commission published the staff's report, which described the range of products and services that advisers obtain under their client commission arrangements.[47] The report raised concerns about the nature of products and services that were being treated as ''research,'' the purchase of ''mixed-use'' items, disclosure by advisers about their client commission arrangements, and recordkeeping.[48] The 1998 OCIE Report made several recommendations for improving commission practices, including that the Commission provide further guidance on the scope of the safe harbor and require better recordkeeping and enhanced disclosure of client commission arrangements and transactions.[49]

D. Report of the NASD's Mutual Fund Task Force

In 2004, the NASD Mutual Fund Task Force, composed of senior executives from mutual fund management companies and broker-dealers, as well as representatives from the academic and legal communities, published observations and recommendations to the Commission concerning client commission practices and portfolio transaction costs.[50] In particular, the NASD Task Force Report recommended that the Section 28(e) safe harbor be retained, but that the interpretation of the scope of research services be narrowed to better tailor it to the types of client commission services that principally benefit the adviser's clients rather than the adviser.[51] The NASD Task Force Report recommended that the Commission interpret the safe harbor to protect only brokerage services as described in Section 28(e)(3) and the ''intellectual content'' of research, but not the means by which such content is provided.[52] The NASD Task Force Report suggested that this approach would exclude magazines, newspapers, and other such publications that are in general circulation to the retail public, and such items as computer hardware, phone lines, and data transmission lines.[53] The NASD Task Force Report emphasized that the safe harbor should encompass third-party research and proprietary research on equal terms, and recommended improved disclosure.[54]

E. United Kingdom Financial Services Authority (''FSA'')

On July 22, 2005, the FSA adopted final client commission rules in conjunction with issuing policy statement PS 05/9.[55] The final rules describe ''execution'' and ''research'' services and products eligible to be paid for by commissions, and specify a number of ''non-permitted'' services that must be paid for in hard dollars, such as custody not incidental to execution, computer hardware, telephone lines, and portfolio performance measurement and valuation services.[56] The policy statement also acknowledges that some products and services may be permitted or non-permitted depending on how they are used by the money manager.[57] The rules will become effective beginning in January 2006, with a transitional period until June 2006.[58]

With the globalization of the world's financial markets, many U.S. market participants have a significant presence abroad, and in particular in the U.K. To the extent that the Commission's approach to client commissions is compatible with that taken in the U.K., market participants' costs of compliance with multiple regulatory regimes would be reduced. Therefore, we have taken the FSA's work into account in developing our position in this release, while recognizing the significant differences in our governing law and rules, such as the fact that the U.K. does not have a statutory provision similar to

[45] *See* Letter from Hardwick Simmons, Chief Executive Officer, The Nasdaq Stock Market, Inc. to Harvey L. Pitt, Chairman, U.S. Securities and Exchange Commission (Sept. 7, 2001) (on file with the Commission).

[46] 2001 Release, 67 FR at 7.

[47] *See* Office of Compliance Inspections and Examination, U.S. Securities and Exchange Commission, *Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds* 3 (Sept. 22, 1998) (''1998 OCIE Report''), *available at http://www.sec.gov/news/studies/softdolr.htm.*

[48] 1998 OCIE Report, at 4–5.

[49] *Id.* at 47–52.

[50] *See* NASD, Report of the Mutual Fund Task Force, ''Soft Dollars and Portfolio Transaction Costs'' (Nov. 11, 2004) (''NASD Task Force Report''), *available at http://www.nasd.com/web/groups/rules_regs/documents/rules_regs/nasdw_012356.pdf.*

[51] NASD Task Force Report, at 5.

[52] NASD Task Force Report, at 6–7. The Task Force proposed that ''intellectual content'' be defined as ''any investment formula, idea, analysis or strategy that is communicated in writing, orally or electronically and that has been developed, authored, provided or applied by the broker-dealer or third-party research provider (other than magazines, periodicals or other publications in general circulation).'' *Id.* at 7.

[53] Specifically, the NASD Task Force indicated that its proposed definition of research services would exclude the following: computer hardware and software, unrelated to any research content or analytical tool; phone lines and data transmission lines; terminals and similar facilities; magazines, newspapers, journals, and on-line news services; portfolio accounting services; proxy voting services unrelated to issuer research; and travel expenses incurred in company visits. NASD Task Force Report, at 7.

[54] Regarding disclosure, the NASD Task Force Report recommended, among other things: (a) Ensuring that fund boards obtain information about a fund adviser's brokerage allocation practices and client commission services received; (b) mandating enhanced disclosure in fund prospectuses to improve investor awareness; (c) applying disclosure requirements to all types of commissions; and (d) enhancing disclosure to investors about portfolio transaction costs. NASD Task Force Report, at 4. *See infra* note 7.

[55] U.K. Financial Services Authority, Policy Statement 05/9, Bundled Brokerage and Soft Commission Arrangements: Feedback on CP 05/5 and Final Rules (July 2005) (''FSA Final Rules''), *available at http://www.fsa.gov.uk/pages/library/policy/policy/2005/05_09.shtml.* The rules apply only to equity trades and not to fixed income trades. FSA Final Rules, at Annex, p. 6 (Conduct of Business Sourcebook Rule 7.18.1). The FSA proposed the rules in March 2005. *See* Consultation Paper 05/5, Bundled Brokerage and Soft Commission Arrangements: Proposed Rules (Mar. 2005) (''FSA Rule Proposal''), *available at http://www.fsa.gov.uk/pubs/cp/cp05_05.pdf.*

[56] *See* FSA Final Rules, at Annex, pp. 8–9 (Conduct of Business Sourcebook Rules 7.18.4 to 7.18.8). *See also* FSA Rule Proposal, at 63–64.

[57] FSA Final Rules, at 5. The rules also set forth the principle that investment managers should inform advisory clients how their commissions are being spent, and indicate that, in evaluating compliance with this principle, the FSA will have regard for the extent to which investment managers adopt the disclosure standards developed by industry associations such as the U.K. Investment Management Association (''IMA''). *See* FSA Final Rules, at Annex, p. 11 (Conduct of Business Sourcebook Rule 7.18.14). *See also* Investment Management Association, Pension Fund Disclosure Code, Second Edition (Mar. 2005), *available at http://www.investmentuk.org/news/standards/pfdc2.pdf.*

[58] FSA Final Rules, at 5. Firms may continue to comply with existing rules until the earlier of the expiration of existing agreements or June 30, 2006.

Section 28(e).[59] This proposed interpretive guidance is generally consistent with the FSA's rules, with a few exceptions.[60]

III. Commission's Interpretive Guidance

In light of recent developments in client commission practices, evolving technologies, marketplace developments, and the observations of the staff in examinations of industry participants, we have revisited our previous guidance as to the meaning of the phrase ''brokerage and research services'' in Section 28(e). After careful consideration, we are proposing a revised interpretation that would replace Sections II and III of the 1986 Release.[61] Specifically, we are providing guidance with respect to: (i) The appropriate framework for analyzing whether a particular service falls within the ''brokerage and research services'' safe harbor; (ii) the eligibility criteria for ''research''; (iii) the eligibility criteria for ''brokerage''; and (iv) the appropriate treatment of ''mixed-use'' items. We also discuss the money manager's statutory requirement to make a good faith determination that the commissions paid are reasonable in relation to the value of the brokerage and research services received. Finally, we provide guidance on third-party research and commission-sharing arrangements.

Section 28(e) applies equally to arrangements involving client commissions paid to full service broker-dealers that provide brokerage and research services directly to money managers, and to third-party research arrangements where the research services and products are developed by third parties and provided by a broker-dealer that participates in effecting the transaction. Today, it remains true that, if the conditions of the safe harbor of Section 28(e) are met, a money manager does not breach his fiduciary duties solely on the basis that he uses client commissions to pay a broker-dealer more than the lowest available commission rate for a bundle of products and services provided by the broker-dealer (*i.e.*, anything more than ''pure execution'').

A. Present Environment

In the 1986 Release, the Commission incorporated from the legislative history the phrase ''lawful and appropriate assistance'' to the money manager in carrying out his investment decision-making responsibilities in developing the Commission standard governing the range of brokerage and research products and services that may be obtained by a money manager within the safe harbor.[62] Since that time, some have construed this standard broadly to apply to services and products that are only remotely connected to the investment decision-making process. In some cases, ''administrative'' or ''overhead'' goods and services have been classified as research.[63] In the 1998 OCIE Report, examiners reported that 28% of the money managers and 35% of the broker-dealers that were examined had entered into at least one client commission arrangement that, in the staff's view, was outside of the scope of Section 28(e) and the 1986 Release.[64] In particular, OCIE examiners identified numerous examples of advisers that it believed failed to separate overhead or administrative expenses from those items that provide benefits to clients as brokerage and research services.[65] Examples of non-research items included: certified financial analyst (CFA) exam review courses, membership dues and professional licensing fees, office rent, utilities, phone, carpeting, marketing, entertainment, meals, copiers, office supplies, fax machines, couriers, backup generators, electronic proxy voting services, salaries, and legal and travel expenses.[66]

Client commissions are also used extensively to pay for mechanisms related to the delivery of research or brokerage services. In the 1998 OCIE Report, staff reported that some advisers used client commissions to pay for various peripheral items that support hardware and software, such as the power needed to run the computer and the dedicated telephone line used to receive information into the computer.[67]

The products and services available to money managers have grown more varied and complex. For example, a single software product may perform an array of functions, but only some of the functions are properly ''brokerage and research services'' under Section 28(e). In the 1998 OCIE Report, staff reported that ''the types of products available for purchase with client commissions have greatly expanded since 1986,'' leaving industry participants to grapple with decisions as to whether these products are ''research'' or ''brokerage'' within the safe harbor, or whether these products should be considered part of money managers' overhead expenses to be paid for by managers with their own funds.[68]

The Commission observes that developments in technology have led to difficulties in applying client commission standards that were developed over the past thirty years. In addition, OCIE staff reported that money managers have taken an overbroad view of the products and services that qualify as ''brokerage and research services'' under the safe harbor.[69] The complexity of products and services creates uncertainty about whether client commissions may be used within the safe harbor to purchase all or a portion of particular products and services. This uncertainty may result in the use of client commission dollars to acquire products and services that are outside of the safe harbor, improper allocation of research and non-research mixed-use products and services (as contemplated by the 1986 Release), or inadequate documentation of allocations.[70]

Questions regarding the use of client commissions have led legislators, regulators, fund industry participants, and investors to consider whether some uses of client commissions should be banned, the safe harbor withdrawn, or changes made to the regulatory landscape.[71] As a first step to address

[59] We have also taken note of the views of other regulators. *See* Ontario Securities Commission, Concept Paper 23–402, *Best Execution and Soft Dollar Arrangements* (Feb. 8, 2005), *available at http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part2/cp_20050204_23–402_bestexecution.jsp*; Australian Securities and Investments Commission, Press Release 04–181, *Soft Dollar Benefits Need Clear Disclosure* (June 10, 2004), *available at http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/77D7FCEFB7653EC5CA256EAF0002F6C2?opendocument.*

[60] The FSA has determined that market data that has not been analyzed or manipulated does not meet the requirements of a research service, but permits managers to justify using client commissions to pay for raw data feeds as execution services. The FSA also has identified seminars as ''non-permitted'' services. FSA Final Rules, at 2.15 and Annex, p. 9 (Conduct of Business Sourcebook Rules 7.18.7 and 7.18.8(d)).

[61] Our proposed interpretation would not replace other sections of the 1986 Release.

[62] *See* Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249. *See also supra* note 76.

[63] 1998 OCIE Report, at 31.

[64] *Id.* at 22, 31.

[65] *Id.* at 31.

[66] *Id.* at 31–32.

[67] *Id.* at 34–35.

[68] *Id.* at 49.

[69] *See id.* at 3–4, 31–32.

[70] *See id.* at 4–6, 32–33.

[71] *See, e.g.*, Mutual Funds Integrity and Fee Transparency Act of 2003, H.R. 2420, 108th Cong. (2003) (This bill would have required, among other things, that the Commission do the following: issue rules requiring mutual funds to disclose their policies and practices regarding the use of client commissions to obtain research, advice, or brokerage activities; issue rules requiring managers to maintain copies of the written contracts with third-party research providers; and conduct a study on the use of client commission arrangements by managers.); Mutual Fund Transparency Act of 2003, S. 1822, 108th Cong. (2003) (This bill would have required, among other things, that the Commission

Continued

the present environment, the Commission has determined to provide further guidance on the scope of the safe harbor.[72] Further guidance in this area may be particularly important because, under existing law and rules, money managers must disclose client commission arrangements as material information,[73] and may provide more detailed disclosure when they receive products or services that fall outside the scope of the safe harbor. If a money manager incorrectly concludes that a product or service is within the safe harbor, the money manager may provide disclosure that is inadequate. In addition, guidance will assist money managers of registered investment companies and pension funds subject to ERISA in determining whether they are complying with the Investment Company Act and ERISA, respectively, because using client commissions to pay for products that are outside the safe harbor may violate these laws.

B. Framework for Analyzing the Scope of the ''Brokerage and Research Services'' Under Section 28(e)

The Commission has recognized the need to interpret the scope of the terms ''brokerage and research services'' in Section 28(e) in light of Congress's intention to provide a limited safe harbor for conduct that otherwise may be a breach of fiduciary duty. The Senate Committee Report on the 1975 Amendments regarding Section 28(e) states: ''The definition of brokerage and research services is intended to comprehend the subject matter in the broadest terms, subject always to the good faith standard in Subsection (e)(1).''[74] However, as previously noted by the Commission, ''Since Section 28(e) involves a statutory exemption for conduct which might otherwise constitute a breach of fiduciary duty owed by a money manager to his client, the Commission believes that the section should be construed in light of its limited purposes.''[75]

In the 1986 Release, the Commission adopted the ''lawful and appropriate assistance'' standard for ''brokerage and research services,''[76] which was intended to supplement the statutory elements of the analysis of whether a money manager's payment for a product or service with client commissions is within the safe harbor. While the 1986 Release focused on the application of the ''lawful and appropriate assistance'' standard to research, we believe the standard also applies to brokerage services.

Taking into account the legislative history of Section 28(e) and our prior guidance, the analysis of whether a particular product or service falls within the safe harbor should involve three steps. First, the money manager must determine whether the product or service falls within the specific statutory limits of Section 28(e)(3)(A), (B), or (C) (*i.e.*, whether it is an eligible product or service under the safe harbor).[77] Second, the manager must determine whether the eligible product or service actually provides lawful and appropriate assistance in the performance of his investment decision-making responsibilities. Finally, the manager must make a good faith determination that the amount of client commissions paid is reasonable in light of the value of products or services provided by the broker-dealer.[78] We discuss these statutory elements in more detail below.

C. Eligibility Criteria for ''Research Services'' Under Section 28(e)(3); Lawful and Appropriate Assistance

The eligibility criteria that govern ''research services'' are set forth in Section 28(e)(3) of the Exchange Act:

For purposes of the safe harbor, a person provides * * * *research services* insofar as he—

(A) furnishes *advice,* either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes *analyses* and *reports* concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; * * *[79]

In determining that a particular product or service falls within the safe harbor, the money manager must conclude that it constitutes ''advice,'' ''analyses,'' or ''reports'' within the meaning of the statute and that its subject matter falls within the categories specified in Section 28(e)(3)(A) and (B). With respect to the subject matter of potential ''research services,'' we note that the categories expressly listed in Section 28(e)(3)(A) and (B) also ''subsume'' other topics related to securities and the financial markets.[80]

---

issue a rule to require mutual funds to disclose as fund fees and expenses brokerage commissions paid by the fund and borne by shareholders.). *See also* Letter from Matthew P. Fink, President, The Investment Company Institute, to William H. Donaldson, Chairman, U.S. Securities and Exchange Commission (Dec. 16, 2003) (urging the Commission to issue interpretative guidance excluding from the Section 28(e) safe harbor: (1) Computer hardware and software and other electronic communications facilities used in connection with trading investment decision-making; (2) publications, including books, newspapers, and electronic publications, that are available to the general public; and (3) third-party research services), *available at http://www.sec.gov/rules/petitions/petn4–492.htm.*

[72] In addition to concerns over the scope of the safe harbor under current market conditions, the Commission recognizes that improvements may be necessary in disclosure and documentation of client commission practices. For example, the ability to enforce client commission standards may be hampered by inadequate documentation. The Commission will evaluate whether further action is necessary.

[73] *See* Form ADV, Pt. II, Items 12.B and 13.A. *See also Sage Advisory Services LLC,* Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001).

[74] Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249.

[75] III Report, 19 SEC Docket at 931.

[76] *See* 1986 Release, 51 FR at 16006 n.9 (quoting from Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249) (The Report concludes, ''Thus, the touchstone for determining when a service is within or without the definition in Section 28(e)(3) is whether it provides lawful and appropriate assistance to the money manager in the carrying out of his responsibilities.''). In articulating the ''commercial availability'' standard for safe-harbor eligibility in the 1976 Release, the Commission also expressly recognized ''lawful and appropriate assistance'' as the ''touchstone'' for whether a service is within or without the provision of Section 28(e)(3). 1976 Release, 41 FR at 13679.

[77] *See* 1986 Release, 51 FR at 16006. *See also* 1976 Release, 41 FR at 13679 (''The term 'brokerage and research services', as used in Section 28(e), is defined in Section 28(e)(3).''). Section 28(e)(3) states that, a person provides brokerage and research services insofar as he—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant. 15 U.S.C. 78bb(3)(A)–(C).

[78] 15 U.S.C.78bb(e). *See* 1986 Release, 51 FR at 16006–07. The Commission also emphasized the money manager's disclosure and other obligations under the federal securities laws, including the duty to seek best execution of his or her client's transactions. *Id.* at 16007–11.

[79] 15 U.S.C. 78bb(e)(3)(A)–(B) (emphasis added).

[80] *See* Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249 (''[T]he reference [in Section 28(e)] to economic factors and trends would subsume political factors which may have economic implications which may in turn have implications in terms of the securities markets as a whole or in terms of the past, present, or future values of individual securities or groups of securities.''). *See also* S. 249 Hearings, at 329, 330 (Combined statement of Baker, Weeks & Co., Inc., Donaldson, Lufkin & Jenrette Sec. Corp., Mitchell,

Thus, for example, a report concerning political factors that are interrelated with economic factors could fall within the scope of the safe harbor. The form (*e.g.,* electronic or paper) of the research is irrelevant to the analysis of eligibility under the safe harbor.

In evaluating the statutory language, the Commission notes that an important common element among ''advice,'' ''analyses,'' and ''reports'' is that each reflects substantive content—that is, the expression of reasoning or knowledge.[81] Thus, in determining whether a product or service is eligible as ''research'' under Section 28(e), the money manager must conclude that it reflects the expression of reasoning or knowledge and relates to the subject matter identified in Section 28(e)(3)(A) or (B). Traditional research reports analyzing the performance of a particular company or stock clearly would be eligible under Section 28(e). Certain financial newsletters and trade journals also could be eligible research services if they relate to the subject matter of the statute. Quantitative analytical software and software that provides analyses of securities portfolios would be eligible under the safe harbor if they reflect the expression of reasoning or knowledge relating to subject matter that is included in Section 28(e)(3)(A) and (B).[82] Seminars or conferences where the content satisfies the above criteria also would be eligible.[83]

In contrast, products or services that do not reflect the expression of reasoning or knowledge, including products with inherently tangible or physical attributes (such as telephone lines or office furniture), are not eligible as research under the safe harbor. We do not believe that these types of products and services could be said to constitute ''advice,'' ''analyses,'' or ''reports'' within the meaning of the statute. Applying this guidance, a money manager's operational overhead expenses would not constitute eligible ''research services.''[84] For example, travel expenses, entertainment, and meals associated with attending seminars would not be eligible under the safe harbor. Similarly, office equipment, office furniture and business supplies, telephone lines, salaries (including research staff), rent, accounting fees and software, website design, e-mail software, internet service, legal expenses, personnel management, marketing, utilities, membership dues, professional licensing fees, and software to assist with administrative functions such as managing back-office functions, operating systems, and word processing are examples of other overhead items that do not meet the statutory criteria for research (or brokerage) set forth in this release and are not eligible under the safe harbor.[85]

Computer hardware and computer accessories, while they may assist in the delivery of research, would not be eligible ''research services'' because they do not reflect substantive content related in any way to making decisions about investing.[86] Similarly, the peripherals and delivery mechanisms associated with computer hardware, including telecommunications lines, transatlantic cables, and computer cables, are outside the ''research services'' safe harbor.

As noted above, even if the manager properly concludes that a particular product or service is an ''analysis,'' ''advice,'' or ''report'' that reflects the expression of reasoning or knowledge, it would be eligible research only if the subject matter of the product or service falls within the categories specified in Section 28(e)(3)(A) and (B). Thus, for example, consultants' services may be eligible for the safe harbor if the consultant provides advice with respect to portfolio strategy, but such services would not be eligible if the advice relates to the managers' internal management or operations.

With respect to data services—such as those that provide market data or economic data—we believe that such services could fall within the scope of the safe harbor as eligible ''reports'' provided that they satisfy the subject matter criteria. In the 1986 Release, we included market data services within the safe harbor, finding that they serve ''a legitimate research function of pricing securities for investment and keeping a manager informed of market developments.''[87] Because market data contain aggregations of information on a current basis related to the subject matter identified in the statute, and in light of the history of Section 28(e), our interpretation would conclude that market data, such as stock quotes, last sale prices, and trading volumes, contain substantive content and constitute ''reports concerning * * * securities'' within the meaning of Section 28(e)(3)(B),[88] and thus would be eligible as ''research services'' under the safe harbor.[89] Similarly, other data would be eligible under the safe harbor if they reflect substantive content—that is, the expression of reasoning or knowledge—related to the subject matter identified in the statute. For example, we believe that company financial data and economic data (such as unemployment and inflation rates or gross domestic product figures) would be eligible as research under Section 28(e).

As discussed above, in order for a product or service to be within the safe harbor, it must not only satisfy the specific criteria of the statute, but it also must provide the money manager with lawful and appropriate assistance in making investment decisions. This standard focuses on how the manager uses the eligible research. For example, some money managers appear to be using client commissions to pay for analyses of account performance that are used for marketing purposes.[90] Although analyses of the performance of accounts are eligible research items because they reflect the expression of reasoning or knowledge regarding subject matter included in Section 28(e)(3)(B), these items when used for marketing purposes are not within the safe harbor because they are not providing lawful and appropriate

Hutchins Inc., and Oppenheimer & Co.) (Research under Section 28(e) should include ''advice and information on industries, economics, world conditions, portfolio strategy and other areas.'').

[81] The content may be original research or a synthesis, analysis, or compilation of the research of others.

[82] *See* Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249 (''computer analyses of securities portfolios would * * * be covered'').

[83] *See* 1986 Release, 51 FR at 16007. We note that the FSA has identified seminars as ''non-permitted'' services. *See* FSA Final Rules, at Annex, p. 9 (Conduct of Business Sourcebook Rule 7.18.8(d)).

[84] *See* 1986 Release, 51 FR at 16006–07.

[85] According to the 1998 OCIE Report, advisers used client commissions to pay for many of these items. *See* notes 65–67 and accompanying text. *See also Sage Advisory Services LLC,* Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001) (adviser improperly used client commission credits to pay for undisclosed non-research business expenses such as legal, accounting, and back-office record keeping services, payments of self-regulatory organization (''SRO'') fees, and rent).

[86] In 1986, the Commission suggested that advisers could use client commissions to pay for the portion of the cost of computers that relate to receiving research. *See* 1986 Release, 51 FR at 16006–07. In light of developments in technology and broad application of the 1986 standard to products and services that are only remotely connected to investment decision-making, as discussed above, we now believe that it is important to clarify that computers fall outside the scope of the safe harbor.

[87] 1986 Release, 51 FR at 16006. We believe that, in the 1986 Release, the Commission's indication that quotation equipment may be eligible under the safe harbor was intended to address market data.

[88] 15 U.S.C. 78bb(e)(3)(B).

[89] We note that the FSA has determined that, ''Examples of goods or services that relate to the provision of research that the FSA do not regard as meeting the requirements of [a research service] include price feeds or historical price data that have not been analyzed or manipulated to reach meaningful conclusions.'' FSA Final Rules, at Annex p. 9 (Conduct of Business Sourcebook Rule 7.18.7).

[90] *See* 1998 OCIE Report, at 20.

assistance to the money manager in performing his investment decision-making responsibilities.[91]

D. Eligibility Criteria for ''Brokerage'' Under Section 28(e)(3); Lawful and Appropriate Assistance

Under Section 28(e)(3)(C) of the Act, a person provides ''brokerage * * * services'' insofar as he or she:

> effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or in which such person is a participant.[92]

Section 28(e)(3)(C) describes the brokerage products and services that are *eligible* under the safe harbor. In addition to activities required to effect securities transactions, Section 28(e)(3)(C) provides that functions ''incidental thereto'' are also eligible for the safe harbor, as are functions that are required by Commission or self-regulatory organization (''SRO'') rules. Clearance and settlement services in connection with trades effected by the broker are explicitly identified as eligible incidental brokerage services. Therefore, the following post-trade services relate to functions incidental to executing a transaction and are eligible under the safe harbor as ''brokerage services'': post-trade matching; exchange of messages among broker-dealers, custodians, and institutions; electronic communication of allocation instructions between institutions and broker-dealers; and routing settlement instructions to custodian banks and broker-dealers' clearing agents. Similarly, services that are required by the Commission or SRO rules are eligible under the safe harbor. For example, in certain circumstances, the use of electronic confirmation and affirmation of institutional trades is required in connection with settlement processing.[93]

In 1998, OCIE staff recommended that the Commission provide further guidance on the scope of the safe harbor concerning the use of items that may facilitate trade execution, based on examiners' reports that

> [t]he technological explosion in the money management industry has been met with an increasing use of soft dollars to purchase state-of-the-art computer and communications systems that may facilitate trade execution. * * * The use of soft dollars to purchase these products may present advisers with questions similar to those surrounding computers purchased for research and analysis, i.e., how should an adviser distinguish between 'brokerage' services and 'overhead' expenses.[94]

In addition, we recognize that to the extent that this release would narrow the scope of eligible research under the safe harbor, there is a risk that, without further guidance on brokerage, some services and products that were previously classified as research could be inappropriately reclassified as brokerage.[95] For these reasons, we are providing the guidance set forth below to assist money managers in determining whether items are eligible as ''brokerage services'' under the safe harbor.

Guided by the statute and legislative history, we believe that Congress intended ''brokerage'' services under the safe harbor to relate to the execution of securities transactions.[96] In our view, brokerage under Section 28(e) should reflect historical and current industry practices that execution of transactions is a process, and that services related to execution of securities transactions begin when an order is transmitted to a broker-dealer and end at the conclusion of clearance and settlement of the transaction. We believe that this temporal standard is an appropriate way to distinguish between ''brokerage services'' that are eligible under Section 28(e) and those products and services, such as overhead, that are not eligible. Specifically, for purposes of the safe harbor, we believe that brokerage begins when the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution and ends when funds or securities are delivered or credited to the advised account or the account holder's agent. Unlike brokerage, research services include services provided before the communication of an order. Thus, advice provided by a broker before an order is transmitted may fall within the research portion of the safe harbor, but not the brokerage portion of the safe harbor.

Under this temporal standard, communications services related to the execution, clearing, and settlement of securities transactions and other incidental functions, *i.e.*, connectivity service between the money manager and the broker-dealer and other relevant parties such as custodians (including dedicated lines between the broker-dealer and the money manager's order management system; lines between the broker-dealer and order management systems operated by a third-party vendor; dedicated lines providing direct dial-up service between the money manager and the trading desk at the broker-dealer; and message services used to transmit orders to broker-dealers for execution) are eligible under Section 28(e)(3)(C). In addition, trading software operated by a broker-dealer to route orders to market centers and algorithmic trading software is ''brokerage.''[97]

On the other hand, order management systems (''OMS'') used by money managers to manage their orders (including OMS developed in-house by the manager and those obtained from third-party vendors) and hardware, such as telephones or computer terminals, are not eligible for the safe harbor as ''brokerage'' because they are not sufficiently related to order execution and fall outside the temporal standard for ''brokerage'' under the safe harbor. Products and services such as trade analytics, surveillance systems, or compliance mechanisms, do not qualify as ''brokerage'' in the safe harbor because they are not integral to the execution of orders by the broker-dealers, *i.e.*, they fall outside the temporal standard described above.[98]

---

[91] As discussed below in the mixed-use section, if the manager uses account performance analyses for both marketing purposes and investment decision-making, the manager may use client commissions only to pay for the allocable portion of the item attributable to use for investment decision-making under Section 28(e). *See infra* Section III.E.

[92] 15 U.S.C. 78bb(e)(3)(C).

[93] *See* NASD Rule 11860(a)(5); New York Stock Exchange (''NYSE'') Rule 387(a)(5); American Stock Exchange Rule 423(5); Chicago Stock Exchange Article XV, Rule 5; Pacific Exchange Rule 9.12(a)(5); Philadelphia Stock Exchange Rule 274(b).

[94] 1998 OCIE Report, at 35–36, 50.

[95] The NASD Task Force Report made a similar observation, and recommended that the Commission ''monitor the use of the safe harbor for brokerage services for such inappropriate attempts to maintain the *status quo* by expanding the brokerage services aspect of the safe harbor.'' NASD Task Force Report, at 7 n.20.

[96] *See* Securities Acts Amendments of 1974, H.R. 5050, 93d Cong. (1974) (House bill on safe harbor referred to ''brokerage services, including * * * research or execution services''); H.R. Rep. No. 93–1476 (1974) (House Committee Report on H.R. 5050 referred to ''brokerage'' as ''research and other services related to the execution of securities transactions''); Joint Explanatory Statement of the Comm. of Conference, Securities Acts Amendments of 1975, H.R. Conf. Rep. No. 94–229, at 108 (1975), *reprinted in* 1975 U.S.C.C.A.N. 321, 338 (House Conference Report on final House bill on Section 28(e) describes the safe harbor as relating to paying more than the lowest available price for ''execution and research services'').

[97] Unlike research, brokerage services can include connectivity services and trading software where they are used to transmit orders to the broker, because this transmission of orders has traditionally been considered a core part of the brokerage service. We believe that mechanisms to deliver research, on the other hand, are separable from the research and the decision-making process.

[98] For example, to the extent that money managers use trade analytics both for research and to assist in fulfilling contractual obligations to the client or to assess whether they have complied with their own regulatory or fiduciary obligations such

Moreover, error correction trades or related services in connection with errors made by money managers are not related to the initial trade for a client within the meaning of Section 28(e)(3)(C) because they are separate transactions to correct the manager's error, not to benefit the advised account, and thus error correction functions are not eligible ''brokerage services'' under the safe harbor.[99] The products and services described in this paragraph are properly characterized as ''overhead'' and are ineligible under Section 28(e).

As with research, in order to obtain safe harbor protection for products and services that are eligible as brokerage, the money manager must be able to show that the eligible product or service provides him or her lawful and appropriate assistance in carrying out the manager's responsibilities, and the manager must make a good faith determination that the amount of commissions paid is reasonable in relation to the value of the research and brokerage product or service received.

E. ''Mixed-Use'' Items

As discussed above, the 1986 Release introduced the concept of ''mixed use.'' [100] Where a product obtained with client commissions has a mixed use, a money manager faces an additional conflict of interest in obtaining that product with client commissions.[101] The 1986 Release stated that where a product has a mixed use, a money manager should make a reasonable allocation of the cost of the product according to its use, and emphasized that the money manager must keep adequate books and records concerning allocations in order to make the required good faith determination.[102] Moreover, the allocation determination itself poses a conflict of interest for the money manager that should be disclosed to the client.[103] It appears that, in practice, some managers may have made questionable mixed-use allocations and failed to document the bases for their allocation decisions.[104] Lack of documentation makes it difficult for the manager to make the required good faith showing of the reasonableness of the commissions paid in relation to the value of the portion of the item allocated as brokerage and research under Section 28(e), and also makes it difficult for compliance personnel to ascertain the basis for the allocation.[105]

We continue to believe that the ''mixed-use'' approach is appropriate. In that connection, we reiterate today the Commission's guidance provided in the 1986 Release regarding the mixed-use standard: [106] ''The money manager must keep adequate books and records concerning allocations so as to be able to make the required good faith showing.'' [107] As stated above, the mixed-use approach requires a money manager to make a reasonable allocation of the cost of the product according to its use. For example, an allocable portion of the cost of portfolio performance evaluation services or reports may be eligible as research, but money managers must use their own funds to pay for the allocable portion of such services or reports that is used for marketing purposes.[108]

F. The Money Manager's Good Faith Determination as to Reasonableness Under Section 28(e)

Section 28(e) requires money managers who are seeking to avail themselves of the safe harbor to make a good faith determination that the commissions paid are reasonable in relation to the value of the brokerage and research services received.[109] The Commission reaffirms the money manager's essential obligation under Section 28(e) to make this good faith determination. The burden of proof in demonstrating this determination rests on the money manager.[110]

A money manager satisfies Section 28(e) if he or she can demonstrate that the item is eligible under the language of the statute, the manager has used the item in performing decision-making responsibilities for accounts over which he exercises investment discretion, and, in good faith, the manager believes that the amount of commissions paid is reasonable in relation to the value of the research or brokerage product or service received, either in terms of the particular transaction or the manager's overall responsibilities for discretionary accounts. Thus, for example, a money manager may purchase an eligible item of research with client commissions if he or she properly uses the information in formulating an investment decision, but another money manager cannot rely on Section 28(e) to acquire the very same item if the manager does not use the item for investment decisions or if the money manager determines that the commissions paid for the item are not reasonable with respect to the value of the research or brokerage received. Similarly, a money manager may not obtain eligible products, such as market data, to camouflage the payment of higher commissions to broker-dealers for ineligible services, such as shelf space.[111] In this instance, the money manager could not make the determination, in good faith, that the commission rate was reasonable in relation to the value of the Section 28(e) eligible products because the commission would incorporate a payment to the broker-dealer for the non-Section 28(e) services. Further, if research products or services that are eligible under Section 28(e)(3) have

as the duty of best execution or for other internal compliance purposes, the trade analytical software is a mixed-use product, and managers must use their own funds to pay for the allocable portion of the cost of the software that is not within the safe harbor because it is attributable to internal compliance purposes. *See supra* note 1.

[99] We note that the staff has taken a similar position. *See* Charles Lerner, Department of Labor, No-Action Letter (Oct. 25, 1988) (Dept. of Labor (''DOL'') sought Commission staff advice regarding applicability of Section 28(e) to commission practices discovered by DOL investigators involving ERISA plans).

[100] *See* 1986 Release, 51 FR at 16007.

[101] *Id.* at 16006–07.

[102] *Id.*

[103] *Id.* at 16006 n.13.

[104] 1998 OCIE Report, at 32–34.

[105] *Id.*

[106] As noted above, this proposed interpretation would replace Sections II and III of the 1986 Release.

[107] 1986 Release, 51 FR at 16006. The Commission may further address the documentation of mixed-use items at a later time.

[108] Similarly, if the money manager seeks the protection of the safe harbor and receives both Section 28(e) eligible and ineligible products and services for a bundled commission rate, the manager must use his own funds to pay for the allocable portion of the cost of products and services that are not within the safe harbor.

[109] As we noted in 1986, ''[a] money manager should consider the full range and quality of a broker's services in placing brokerage including, among other things, the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness to the money manager* * *. [T]he determinative factor is not the lowest possible commission cost but whether the transaction represents the best qualitative execution for the managed account.'' 1986 Release, 51 FR at 16011. *See also supra* note 5.

[110] *See* House Comm. on Interstate and Foreign Commerce, Securities Acts Amendments of 1975, H.R. No. 94–123, at 95 (1975). The report states that: ''It is, of course, expected that money managers paying brokers an amount [of commissions] which is based upon the quality and reliability of the broker's services including the availability and value of research, would stand ready and be required to demonstrate that such expenditures were bona fide.'' *See also* 1986 Release, 51 FR at 16006–16007.

[111] In other situations, the Commission has imposed sanctions on money managers and broker-dealers for failing to disclose conflicts associated with the use of brokerage commissions to compensate broker-dealers for marketing particular funds (a practice known as payment for shelf-space). *See, e.g., Edward D. Jones & Co., L.P.*, Securities Act Release No. 8520 (Dec. 22, 2004); *Franklin Advisers, Inc. and Franklin/Templeton Distributors, Inc.*, Advisers Act Release No. 2337 (Dec. 13, 2004). *Cf.* Investment Company Act Release No. 26591 (Sept. 2, 2004), 69 FR 54728 (Sept. 9, 2004) (Commission adopted Rule 12b–1(h) under the Investment Company Act, which prohibits funds from using brokerage to pay for distribution).

been simply copied, repackaged, or aggregated, the money manager must make a good faith determination that any additional commissions paid in respect of such copying, repackaging, or aggregation services are reasonable.

G. Third-Party Research and Commission-Sharing Arrangements [112]

Third-party research arrangements can benefit advised accounts by providing greater breadth and depth of research. First, these arrangements can provide money managers with the ability to choose from a broad array of independent research products and services. Second, the manager can use third-party arrangements to obtain specialized research that is particularly beneficial to their advised accounts.

1. Research Services Must Be ''Provided by'' the Broker-Dealer

Section 28(e) requires that the broker-dealer receiving commissions must ''provide'' brokerage or research services. The Commission has interpreted this to permit money managers to use client commissions to pay for research produced by someone other than the executing broker-dealer, in certain circumstances (referred to as ''third-party research'').[113] The essential feature of the ''provided by'' element is that the broker-dealer has the direct legal obligation to pay for the research.[114] The Commission also has clarified that research provided in third-party arrangements is eligible under Section 28(e) even if the money manager participates in selecting the research services or products that the broker-dealer will provide.[115] The third party may send the research directly to the broker's customer so long as the broker-dealer has the obligation to pay for the services.[116] In contrast, a money manager may not rely upon Section 28(e) if he uses the broker-dealer merely to pay an obligation that he has incurred with a third party.[117] The 1998 OCIE Report discussed instances in which some money managers had entered into such arrangements whereby broker-dealers paid for research or brokerage services for which the money managers were obligated to pay.[118] The Commission reminds money managers and broker-dealers that these arrangements are not eligible for the Section 28(e) safe harbor.

2. ''Effecting'' Transactions

Section 28(e) requires that the broker-dealer providing the research also be involved in ''effecting'' the trade.[119] The inclusion of this element in Section 28(e) was principally intended to preclude the practice of paying ''give-ups.'' [120] Specifically, when brokerage commissions were fixed before 1975, a ''give-up'' was a payment to another broker-dealer of a portion of the commission required to be charged by the executing broker-dealer.[121] The broker-dealer receiving the give-up may have had no role in the transaction generating the commission, and it may not even have known where or when the trade was executed. Because the portion of the commission ''given up'' is a charge above the cost of execution on client accounts and because the broker-dealer receiving the ''e-up'' did nothing in connection with the securities trade to benefit investors, the Commission found that these arrangements violated the securities laws.[122] In enacting Section 28(e), Congress addressed the issue of give-ups by indicating that the provision did not apply when the money manager made payment to one broker-dealer for the services performed by another broker-dealer.[123] In the 1986 Release, the Commission indicated that payment of a part of a commission to a broker-dealer who is a ''normal and legitimate correspondent'' of the executing or clearing broker-dealer would not necessarily be a ''give-up,'' outside the protection of Section 28(e).[124]

[112] Section 28(e)(1) states in relevant part:

No person * * * shall be deemed to have acted unlawfully or to have breached a fiduciary duty * * * solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for *effecting* a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services *provided by such member, broker, or dealer*, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. 15 U.S.C. 78bb(e)(1) (emphasis added).

[113] *See* 1976 Release, 41 FR at 13679 (Section 28(e) ''might, under appropriate circumstances, be applicable to situations where a broker provides a money manager with research produced by third parties''). *See also* 1986 Release, 51 FR at 16007 (''Although the legislative history of Section 28(e) includes a strong statement that commission dollars may be paid only to the broker-dealer that ''provides'' both the execution and research services and that the section does not authorize the resumption of ''give-ups,'' it seems unlikely that Congress intended to forbid certain common practices that were then considered permissible and whose elimination would be anti-competitive.''); III Report, 19 SEC Docket at 932 (broker need not produce research services ''in house'').

[114] *See* 1986 Release, 51 FR at 16007; III Report, 19 SEC Docket at 932.

[115] Exchange Act Release No. 17371 (Dec. 12, 1980), 45 FR 83707, 83714 n.54 (Dec. 19, 1980) (''Papilsky Release''). *See* 1986 Release, 51 FR at 16007. In the Papilsky Release, the Commission addressed Section 28(e) and third-party research in the context of defining ''bona-fide research'' for purposes of NASD rules that relate to obtaining research in a fixed-price offering.

[116] Papilsky Release, 45 FR at 83714 n.54. *See* 1986 Release, 51 FR at 16007.

[117] Papilsky Release, 45 FR at 83714 n.54.

[118] OCIE reported that approximately 27% of the broker-dealers examined were paying invoices submitted directly by investment advisers for payment obligations of the investment advisers to the third parties. *See* 1998 OCIE Report, at 24–25.

[119] 15 U.S.C. 78bb(e).

[120] In enacting Section 28(e), Congress described give-ups as a ''regrettable chapter in the history of the securities industry and the limited definition of fiduciary responsibility added to the law by this bill in no way permits its return.'' Joint Explanatory Statement Of The Comm. Of Conference, Securities Acts Amendments Of 1975, H.R. Conf. Rep. No. 94–229, at 108 (1975), *reprinted in* 1975 U.S.C.C.A.N. 321, 339.

[121] Give-ups took several forms, but typically occurred when a mutual fund (or its money manager or underwriter) directed an executing broker-dealer to pay a portion of a commission payment to another broker-dealer that was a member of the same exchange as the executing broker-dealer. The give-up often was payment for other services (that may have been unrelated to the trade) provided to the fund (or its adviser or underwriter) by the give-up recipient. *See* Division of Market Regulation, U.S. Securities and Exchange Commission, Market 2000: an Examination of Current Equity Market Developments (Jan. 1994), 1994 SEC LEXIS at 32–33 (citing Special Study, H.R. Doc. No. 88–95, pt. 2, at 316–317 and pt. 4, at 213–14). This type of give-up produced a conflict of interest for the adviser ''between the interest of fund shareholders in lower commission charges and the interest of mutual fund advisers and underwriters in stimulating the sale of additional shares through directing a split of commission charges.'' Special Study, H.R. Doc. No. 88–95, pt. 2, at 318.

[122] *See, e.g.*, *Provident Management Corp.*, 44 SEC 442, 445–47 (Dec. 1, 1970) (finding violations of the antifraud provisions of the federal securities laws where unaffiliated broker-dealers who participated with the fund's officers, adviser, and affiliated broker-dealer in a reciprocal arrangement in which fund transactions were placed with unaffiliated broker-dealer in exchange for payment to affiliated broker-dealer of ''clearance commissions'' on unrelated transactions for which affiliated broker-dealer performed no function). The Commission has found it a violation of the antifraud provisions of the securities laws to interpose an unnecessary party in a transaction, resulting in payment to the interposed party, and an additional cost to the fiduciary account. *See Delaware Management Co.*, 43 SEC 392 (1967) (interpositioning broker between adviser and market maker caused adviser to pay unnecessary brokerage costs and violated the adviser's duty of best execution).

[123] Joint Explanatory Statement of the Comm. of Conference, Securities Acts Amendments of 1975, H.R. Conf. Rep. No. 94–229, at 109 (1975), *reprinted in* 1975 U.S.C.C.A.N. 321, 339. *See also* 1986 Release, 51 FR at 16007; 1976 Release, 41 FR at 13679.

[124] 1986 Release, 51 FR at 16007 (''Section 28(e) was not intended to exclude from its coverage the payment of commissions made in good faith to an introducing broker for execution and clearing services performed in whole or in part by the introducing broker's normal and legitimate correspondent.''); 1976 Release, 41 FR at 13678 (Under Section 28(e), money managers may not direct brokers employed by them to ''give-up'' part of the commission negotiated by the broker and the money manager to another broker designated by the money manager for whom the executing or clearing broker is not a normal and legitimate correspondent.).

Some investment managers today use ''commission-sharing'' arrangements to execute trades with one broker-dealer and obtain research or other services from a different broker-dealer. In some commission-sharing arrangements, the introducing broker-dealer accepts orders from its customers and then may execute the trade and provide research, while a second broker-dealer clears and settles the transaction. In other commission-sharing arrangements, an ''introducing'' broker-dealer retains a portion of the commission, and has little, if any, role in accepting customer orders or in executing, clearing, or settling any portion of the trade. Rather, another broker-dealer (often called the ''clearing broker'') executes, clears, and settles the trade, receiving a portion of the commission for its services. In some instances, the introducing broker is unaware of the daily trading activity of its customers because the orders are sent by the money manager directly (and only) to the clearing broker-dealer.[125]

Where more than one broker-dealer is involved in a commission-sharing arrangement, the Commission takes the view that the ''introducing broker [must be] engaged in securities activities of a more extensive nature than merely the receipt of commissions paid to it by other broker-dealers for ''research services'' provided to money managers.'' [126]

Commission-sharing arrangements typically involve clearing agreements pursuant to SRO rules.[127] These SRO rules require that introducing and clearing firms contractually agree to allocate enumerated functions, but do not mandate how the functions should be divided (*i.e.*, they do not specify the functions that must be done by the introducing broker-dealer or clearing broker-dealer).[128] We note, however, that a clearing agreement that satisfies SRO rule requirements does not necessarily satisfy the criteria of Section 28(e). Each broker-dealer must play a role in effecting securities transactions that goes beyond the mere provision of research services to money managers.[129] The nature of the activities actually performed by each broker-dealer determines whether the commission-sharing arrangement qualifies under Section 28(e).[130]

In connection with commission-sharing arrangements, each party to the arrangement must determine if it is contributing to a violation of law, including whether the involvement of multiple parties to the trade is necessary to effecting the trade, beneficial to the client, and appropriate in light of all applicable duties.[131] In particular, as discussed above, the broker-dealer involved in effecting the trade must also be legally obligated to pay for the third-party research or brokerage service (*i.e.*, the ''provided by'' requirement).[132]

The following elements are necessary for a commission-sharing arrangement under which research and brokerage services are provided under the safe harbor:

- The commission-sharing arrangement must be part of a normal and legitimate correspondent relationship in which each broker-dealer is engaged in securities activities of a more extensive nature than merely the receipt of commissions paid to it by other broker-dealers for research services provided to money managers (*i.e.*, ''effecting securities transactions'' requirement).[133] Based on the Commission's experience, we believe that, at a minimum, this means that the introducing broker-dealer must: (1) Be financially responsible to the clearing broker-dealer for all customer trades until the clearing broker-dealer has received payment (or securities), *i.e.*, the introducing broker-dealer must be at risk to the clearing broker-dealer for its customers' failure to pay; (2) make and/or maintain records relating to its customer trades required by Commission and SRO rules, including blotters and memoranda of orders; (3) monitor and respond to customer comments concerning the trading

[125] The 1986 Release suggested that protection of Section 28(e) would not be lost merely because the money manager by-passed the order desk of the introducing broker and called his orders directly into the clearing broker. 1986 Release, 51 FR at 16007.

For purposes of this discussion, commission-sharing arrangements are different from ''step-outs.'' In a step-out, the investment manager directs the executing broker to allocate all or a certain number of shares of an executed trade, *e.g.*, 100 shares of a 1000 share trade, to another broker-dealer for clearance and settlement. In this example, the executing broker executes the entire trade, clears and settles 900 shares, and receives the commission for 900 shares. The second or ''stepped-in'' broker clears and settles 100 shares and negotiates the commission for 100 shares with the manager. The executing broker may not know what commission is paid to the stepped-out broker or what services (other than clearance and settlement) are provided by the stepped-out broker to the manager. Step-outs have been used, at the client's direction, where the client has a commission recapture arrangement with the ''stepped-in'' broker. In the past, step-outs were used to reward the ''stepped-in'' broker-dealer for fund distribution or to obtain ''brokerage and research services.'' See Thomas P. Lemke and Gerald T. Lins, Soft Dollars and Other Brokerage Arrangements 4–16 to 4–17 (2004). Provided that each broker in a step-out performs substantive functions in effecting trades, *e.g.*, clearance and settlement, such arrangements may be eligible for the safe harbor.

[126] 1986 Release, 51 FR at 16007, quoting Data Exchange Securities, No-Action Letter (Apr. 20, 1981).

Where two broker-dealers are involved in a commission-sharing arrangement that otherwise satisfies Section 28(e), one of the broker-dealers must be financially responsible for providing the research. *See* 1986 Release, 51 FR at 16007; III Report, 19 SEC Docket at 932.

[127] *See, e.g.*, NYSE Rule 382, ''Carrying Agreements,'' 2 NYSE Guide ¶ 2382, Rule 382; NASD Rule 3230, ''Clearing Agreements'; NASD Rules of Fair Practice, Section 47, Article III; American Stock Exchange Rule 400 (mirrors the provisions of NYSE Rule 382(b)).

[128] For example, NYSE Rule 382 specifies that each fully-disclosed clearing agreement between SRO members shall allocate to the respective member the following functions: (i) Opening, approving, and monitoring of accounts; (ii) extension of credit; (iii) maintenance of books and records; (iv) receipt and delivery of funds and securities; (v) safeguarding of funds and securities; (vi) confirmations and statements; (vii) acceptance of orders and execution of transactions. NYSE Rule 382(b). Further, the clearing broker must provide annually to the introducing broker-dealer a list of reports to assist the introducing broker to supervise and monitor its customer accounts and to fulfill its responsibilities under the agreement as well as deliver, and retain a copy of, those reports that the introducing broker requests. NYSE Rule 382(e)(1) and (2).

[129] Step-outs may not require clearing agreements but may be within Section 28(e) if each broker performs substantive functions in effecting the trade (*e.g.*, clearance and settlement). *See supra* note 125.

[130] Introducing and clearing brokers still remain subject to all applicable securities laws and regulations and SRO rules. For instance, nothing in this release changes in any way the applicability of anti-money laundering (''AML'') laws and regulations applicable to an introducing broker or a clearing broker. *See, e.g.*, Currency and Foreign Transactions Reporting Act of 1970 (''Bank Secrecy Act''), [31 U.S.C. 5311 *et seq.*] (as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''USA Patriot Act''), Pub. L. 107–56, sec. 314, 326, 115 Stat. 272); Treasury regulations adopted under the Bank Secrecy Act [31 CFR Part 103]; Exchange Act Rule 17a–8 [17 CFR 240.17a–8]; NYSE Rule 445; NASD Rule 3011. This interpretation also does not alter the introducing broker and the clearing broker's supervisory obligations. *See, e.g.*, Securities Exchange Act Section 15(b)(4)(E) [15 U.S.C. 78o(b)(4)(E)]; NYSE Rules 342 and 405; NASD Rules 3010, 3012, and 3013. This interpretation also does not alter a broker-dealer's best execution obligation to its customers. *See, e.g.*, NASD Rule 2320; NASD Notice to Members 01–22 (Apr. 2001).

[131] *See* 1976 Release, 41 FR at 13679 (''[N]or may money managers, under the authority of Section 28(e), direct brokers employed by them to make ''give up'' payments.''; ''[B]rokers should recognize that their compliance with any direction or suggestion by a fiduciary which would appear to involve a violation of the fiduciary's duty to its beneficiaries could implicate them in a course of conduct violating the anti-fraud provisions of the federal securities laws.''); III Report, 19 SEC Docket at 933 (Where brokers and money managers were aware that an intermediary was providing research to money managers in exchange for directing brokerage to the intermediary's designated brokers, but brokers had limited participation in providing the research, ''those involved should have realized that the arrangement was not permitted by Section 28(e).''; ''[B]rokers should have been alerted to the possibility of conduct which contravened applicable fiduciary principles and the federal securities laws.'').

[132] *See* 1986 Release, 51 FR at 16007; III Report, 19 SEC Docket at 932.

[133] *See supra* notes 119–130 and accompanying text.

process; and (4) generally monitor trades and settlements;[134] and

• A broker-dealer effecting the trade (if not providing research and brokerage services directly) must be legally obligated to a third-party producer of research or brokerage services to pay for the service ultimately provided to a money manager (*i.e.*, ''provided by'' requirement).[135]

IV. Request for Comments

The Commission seeks comment on its proposed interpretive guidance regarding client commission practices under Section 28(e) of the Exchange Act. The Commission asks commentators to address whether the proposed interpretation has accurately identified the industry practices for which guidance would be most useful, and to offer comments on any significant issues arising under Section 28(e) that this release has not addressed. The Commission also requests comment as to whether the proposed interpretive guidance would significantly affect the level and distribution of costs among industry participants and, if so, whether these effects would be beneficial to investors or otherwise serve the public interest.

In addition, the Commission solicits comments on the following topics:

Question 1. Does the Commission's interpretation offer sufficient guidance with respect to the types of ''advice,'' ''analyses,'' and ''reports'' that are eligible as ''research services'' under Section 28(e)?

Question 2. How would investors, money managers, broker-dealers, and others be affected by the Commission's interpretive guidance that client commissions cannot be used to obtain computer equipment as ''research'' under Section 28(e)?

Question 3. Does the Commission's interpretation offer appropriate guidance as to the eligibility of market data and trade analytical software under Section 28(e)?

Question 4. Does the Commission's interpretation offer sufficient guidance as to the eligibility of ''brokerage'' services, functions, and products under Section 28(e)? How would this guidance affect existing arrangements or practices? Is the Commission's temporal standard sufficiently clear? Are there types of services that should be excluded from the safe harbor, even though they might appear to satisfy the temporal standard? If so, explain why those services should be excluded—for example, is the service unrelated to execution of transactions?

Question 5. Does the Commission's interpretation offer sufficient guidance about third-party research and commission-sharing arrangements?

Question 6. How does the Commission's interpretive guidance differ from the approaches that other regulators, SROs, market participants, trade organizations, and investor advocacy groups have adopted or recommended with respect to client commission practices?

Question 7. Are there types of products or services that are commonly paid for with client commissions for which additional guidance would be useful? If so, please provide facts about these products and services and their components, and how they are used. For example, are client commissions commonly used to pay for proxy voting services?

Question 8. Should the Commission provide additional guidance on the allocation and documentation of mixed-use items?

Question 9. Concerns have been expressed by some industry participants and others that mass-marketed publications (publications that are widely circulated to the general public and intended for a broad, public audience) are part of a firm's overhead and should not be paid for with client commissions. To what extent are these types of publications currently being paid for with client commissions? Are the purposes and uses of these types of publications distinguishable from those of traditional research products? Should the Commission provide further guidance in this area?

Question 10. Should the Commission afford firms time to implement the interpretation? In commenting, please provide specific examples of any potential implementation issues.

Dated: October 19, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–21247 Filed 10–24–05; 8:45 am]

BILLING CODE 8010–01–P

[134] *See* 1986 Release, 51 FR at 16007, citing SEI Financial Services Co., No-Action Letter (Dec. 15, 1983), which identified these minimum functions for an introducing broker in a correspondent relationship.

[135] *See supra* notes 113–118 and accompanying text.

Reader Aids

Federal Register

Vol. 70, No. 205

Tuesday, October 25, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, OCTOBER

57483–57724 3
57725–57992 4
57993–58290 5
58291–58602 6
58603–58968 7
58969–59208 11
59209–59620 12
59621–59986 13
59987–60202 14
60203–60404 17
60405–60714 18
60715–61024 19
61025–61210 20
61211–61348 21
61349–61546 24
61547–61712 25

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7936 58281
7937 58283
7938 58285
7939 58287
7940 59209
7941 59977
7942 59979
7943 59981
7944 59983
7945 59985
7946 61013
7947 61015
7948 61017
7949 61019
7950 61545

Executive Orders:
11145 (Continued by 13385) 57989
11183 (Continued by 13385) 57989
11287 (Continued by 13385) 57989
12131 (Continued by 13385) 57989
12196 (Continued by 13385) 57989
12216 (Amended by 13385) 57989
12367 (Continued by 13385) 57989
12382 (Continued by 13385) 57989
12473 (Amended by 13387) 60697
12905 (Continued by 13385) 57989
12958 (See 13387).....60697
12978 (See Notice of October 19, 2005).....61209
12994 (Continued by 13385) 57989
13226 (Amended by 13385) 57989
13231 (Continued by 13385) 57989
13237 (Continued by 13385) 57989
13256 (Continued by 13385) 57989
13265 (Continued by 13385) 57989
13270 (Continued by 13385) 57989
13316 (Superseded in part by 13385).....57989
13231 (Amended by 13385) 57989
13283 (Revoked by 13385) 57989
13326 (Revoked by 13385) 57989
13328 (Revoked by 13385) 57989
13369 (Amended by 13386) 58289
13385 57989
13386 58289
13387 60697

Administrative Orders:
Presidential Determinations:
No. 2005–38 of September 26, 2005 60397
No. 2005–39 of September 28, 2005 60399
No. 2005–40 of September 28, 2005 60401
No. 2005–41 of September 29, 2005 60403
Notices:
Notice of October 17, 2005 61023
Notice of October 19, 2005 61209

5 CFR

532 61211
1650 59621

6 CFR

7 61211
13 59209

7 CFR

54 58969
62 58969
205 61217
300 57993
301 .....57993, 61349
302 57993
305 57993
318 57993
319 .....57993, 61351
322 57993
330 57993
340 57993
351 57993
352 57993
353 57993
354 57993
355 57994
360 57993
371 57993
380 57993
915 59622
927 59625

979 57995
981 60405
983 61220
1005 59221
1007 59221
1902 59224
4279 57483
4287 57483
Proposed Rules:
51 61068
301 ....58084, 59280
319 59283
1030 58086
1219 ....59678, 61238
1260 58095
1437 57520

9 CFR

77 ....58291, 61025, 61226
93 57486
327 57725
Proposed Rules:
94 61578

10 CFR

430 ....59122, 60407, 61698
431 ....60407, 61698
Proposed Rules:
430 61395

11 CFR

Proposed Rules:
100 60744

12 CFR

34 59987
204 58603
225 59987
229 60418
323 59987
333 60420
564 59987
620 58293
621 58293
650 58293
651 58293
652 58293
653 58293
654 58293
655 58293
722 59987
1700 59628
Proposed Rules:
3 61068
208 61068
225 61068
226 60235
307 60015
325 61068
331 60019
362 60019
404 61395
567 61068

13 CFR

126 58974

14 CFR

21 59932
25 ....57726, 57728, 57730, 58605, 59630, 59632, 59635, 59988, 60422
39 ....57487, 57491, 57493, 57732, 57734, 57736, 57739, 57740, 57998, 58000, 58002, 58005, 58007, 58257, 58293, 58295, 58298, 58300, 58303, 58305, 59229, 59231, 59233, 59236, 59237, 59240, 59243, 59244, 59246, 59252, 59256, 59258, 59263, 59266, 59636, 59638, 59640, 59644, 59647, 60203, 60205, 60206, 60211, 61226, 61229, 61547, 61549
71 ....57497, 57498, 57746, 58307, 58308, 58607, 59651, 59652, 59653, 59990, 59992, 60132, 60424, 61026, 61362, 61552
73 58607
95 57499
97 ....57504, 57746, 60715, 61027
119 58796
121 ....58796, 59932
135 ....58796, 59932
145 ....58796, 59932
183 59932
Proposed Rules:
1 58308
25 58308
39 ....57804, 58100, 58103, 58107, 58110, 58352, 58355, 58357, 58358, 58620, 58623, 58626, 58628, 58631, 58634, 60244, 60246, 60453, 60744, 61078, 61239, 61398, 61580
71 ....57805, 61583, 61585, 61586, 61587
91 58508
121 ....58508, 58966, 58967
125 58508
129 58508
135 ....58966, 58967
382 61241
1260 60456

15 CFR

335 61363
340 61363
902 61233
Proposed Rules:
7 59678

16 CFR

Proposed Rules:
Ch. II 60031
23 57807
305 60716

17 CFR

200 61030
Proposed Rules:
1 58985
145 58985
147 58985
241 61700

18 CFR

153 60426
157 60426
375 60426
Proposed Rules:
2 ....58636, 60748
33 ....58636, 60748
131 60456
292 60456

19 CFR

12 ....58009, 61031
102 58009
141 58009
144 58009
146 58009
163 58009

20 CFR

404 61364
416 61364
Proposed Rules:
404 ....58999, 60251, 60463
408 60251
411 60748
416 ....58999, 60251, 60463

21 CFR

1 57505
20 57505
310 58974
341 58974
510 57927
866 57748
Proposed Rules:
101 60749
133 60751
589 58570

22 CFR

51 61553
96 59654

24 CFR

983 59892
990 61366
Proposed Rules:
3280 61178
3282 61178
3288 61178

25 CFR

161 58882
Proposed Rules:
517 60470

26 CFR

1 ....57509, 57750, 60132
54 59620
801 60214
Proposed Rules:
1 ....57523, 57807, 57930, 60475
301 ....57523, 60475
801 60256

27 CFR

9 ....59993, 59996

29 CFR

697 57722
1610 57510
2560 59620
2590 59620
4022 60002
4044 60002
Proposed Rules:
404 61400
1910 59290
1926 59290

30 CFR

732 61194
Proposed Rules:
46 57808
48 57808
50 57808
56 57808
57 57808
75 57808
77 57808
250 61589
117 57524
915 60478
936 60481

31 CFR

29 60003

32 CFR

179 58016
199 61368
504 60723
631 60728
Proposed Rules:
505 61589

33 CFR

100 ....58055, 61032, 61034
117 ....58056, 58057, 58059, 58308, 59655, 61380
165 ....58608, 60004
Proposed Rules:
165 58646
207 61401

34 CFR

668 61037
674 61037
682 61037
685 61037

36 CFR

1230 58978

37 CFR

201 58310
256 58310
Proposed Rules:
201 57526

38 CFR

Proposed Rules:
5 61326

39 CFR

111 61037
Proposed Rules:
111 60036

40 CFR

3 59848
9 ....59402, 59848, 60134
35 61039
51 ....59582, 59848
52 ....57511, 57750, 58311, 58313, 58321, 58325, 58978, 59657, 60008, 60010, 60735, 60738, 60740, 60741, 61232, 61382, 61384, 61556, 61561, 61563
60 59848
62 ....57762, 57764, 58328, 61044
63 ....57513, 59402, 59848
69 59848
70 59848
71 59848
80 58330
81 ....59657, 61232, 61563
82 60443
122 60134

123 59848
142 59848
145 59848
162 59848
166 61232
180 59268
233 59848
257 59848
258 59848
260 59402
261 ....57769, 60217
264 59402
265 59402
266 59402
270 59402
271 ....59402, 59848
281 59848
403 ....59848, 60134
501 59848
710 60217
745 59848
763 59848

Proposed Rules:

51 ....59680, 61081
52 ....57531, 58112, 58119, 58138, 58146, 58154, 58167, 59681, 59688, 59690, 60036, 60037, 60769, 61081, 61104, 61402, 61403, 61590
62 ....57531, 57811, 57812, 58361, 61106
63 ....57534, 61404, 61411, 61417
69 59690
81 59690
158 61242
194 61107
302 57813
355 57813
372 57822
403 60199

41 CFR

60–1 58946
301–10 61046
301–11 60221
301–74 60221

42 CFR

73 61047
405 57785
412 57785
413 57785
415 57785
419 57785
422 57785
431 58260
457 58260
483 58834
485 57785

Proposed Rules:

411 59182
421 58649
1001 59015

43 CFR

3000 58854
3100 58854
3110 58854
3120 58854
3130 58854
3140 58610
3200 58854
3470 58854
3500 58854
3600 58854
3800 58854
3830 58854
3833 58854
3835 58854
3836 58854
3860 58854
3870 58854

Proposed Rules:

4 58167
2560 58654

44 CFR

64 ....61388, 61389
65 ....57786, 57788
67 57791
206 60443

Proposed Rules:

67 ....57848, 57850

45 CFR

Proposed Rules:

Ch. XXV 60257
302 60038
303 60038
307 60038

46 CFR

296 59400

Proposed Rules:

389 60770

47 CFR

1 61049
5 59276
15 60742
22 61049
24 61049
25 59276
27 ....58061, 61049
51 60222
63 60222
64 ....59664, 60222
73 ....59277, 59279, 60742
90 61049
97 59276

Proposed Rules:

22 60770
24 60770
27 60770
63 60259
64 ....59704, 60259
73 ....59292, 59293, 59294, 59295, 60781

48 CFR

Ch. 2 58980
204 58980
215 58980
252 58980
1504 61567
1509 61567
1529 61567
1536 61567
1537 61567
1552 61567

Proposed Rules:

2 60782
4 60782
52 60782
1835 60484
1852 60484

49 CFR

172 59119
192 61571
195 61571
303 58616
387 58065
591 57793
592 57793
594 57793

Proposed Rules:

29 58175
192 57536
387 61111
393 58657
571 57549

50 CFR

17 ....58335, 59808, 59952, 60658, 60886
222 60013
223 60013
622 57802
648 ....57517, 57802, 58351, 60449, 60450, 61233, 61577
660 ....58066, 59296, 61063, 61235, 61393
679 ....57518, 57803, 58983, 59675, 59676, 60742, 61067

Proposed Rules:

17 ....57851, 58361, 60051, 60608, 61591
21 ....59710, 60052
622 60058
635 ....58177, 58366
660 ....61595, 61597

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 25, 2005

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Quality Systems Verification Programs; livestock, meat, and other agricultural commodities; user-fee schedule; published 10-11-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Power mobility devices; payment conditions; published 8-26-05

STATE DEPARTMENT

Passports:

Electronic passport; definitions, validity, replacement, and expedited processing; published 10-25-05

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Assistance awards to U.S. non-Governmental organizations; marking requirements; Open for comments until further notice; published 8-26-05 [FR 05-16698]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Fresh fruit and vegetable terminal market inspection services; fee revisions; comments due by 11-3-05; published 10-20-05 [FR 05-20961]

Melons grown in—

South Texas; comments due by 11-4-05; published 10-5-05 [FR 05-20088]

Oranges and grapefruit grown in—

Texas; comments due by 10-31-05; published 8-31-05 [FR 05-17321]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Noninsured Crop Disaster Assistance Program; tropical regions; comments due by 11-2-05; published 10-3-05 [FR 05-19671]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Meetings; Sunshine Act; Open for comments until further notice; published 10-4-05 [FR 05-20022]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 11-4-05; published 10-5-05 [FR 05-19986]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Contractor personnel interacting with detainees; training; comments due by 10-31-05; published 9-1-05 [FR 05-17347]

Contractors; levy on payment; comments due by 10-31-05; published 9-1-05 [FR 05-17349]

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

TRICARE Dental Program; participating providers reimbursement rate; revision; comments due by 10-31-05; published 8-31-05 [FR 05-17299]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Integrated iron and steel manufacturing; comments due by 10-31-05; published 8-30-05 [FR 05-17193]

Secondary aluminum production; correction; comments due by 11-2-05; published 10-3-05 [FR 05-19714]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Missouri; comments due by 11-2-05; published 10-3-05 [FR 05-19711]

New Mexico; comments due by 11-3-05; published 10-4-05 [FR 05-19877]

North Carolina; comments due by 10-31-05; published 9-29-05 [FR 05-19351]

Air quality implementation plans; approval and promulgation; various States:

Oklahoma; comments due by 11-3-05; published 10-4-05 [FR 05-19837]

Texas; comments due by 11-4-05; published 10-5-05 [FR 05-19994]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:

Montana; comments due by 10-31-05; published 9-30-05 [FR 05-19617]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Flonicamid; comments due by 10-31-05; published 8-31-05 [FR 05-17128]

Halosulfuron-methyl; comments due by 10-31-05; published 8-31-05 [FR 05-17204]

Lactic acid, 2-ethylhexyl ester; comments due by 10-31-05; published 8-31-05 [FR 05-17360]

Methoxyfenozide; comments due by 10-31-05; published 8-31-05 [FR 05-17131]

S-metolachlor; comments due by 10-31-05; published 8-31-05 [FR 05-17367]

Superfund program:

National oil and hazardous substances contingency plan priorities list; comments due by 10-31-05; published 9-30-05 [FR 05-19613]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Texas; general permit for territorial seas; Open for comments until further

notice; published 9-6-05 [FR 05-17614]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION
Committees; establishment, renewal, termination, etc.:
Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]
Common carrier services:
Interconnection—
Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]
Radio services, special:
Amateur services—
Telegraphy examination requirement; comments due by 10-31-05; published 8-31-05 [FR 05-17226]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicaid and State Children's Health Insurance Program:
Payment error rate measurement; comments due by 11-4-05; published 10-5-05 [FR 05-19910]
Medicare:
Physicians' services and certain items; prior determination of coverage; comments due by 10-31-05; published 8-30-05 [FR 05-17175]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Drug approvals; circumstances under which an active ingredient may be marketed in both prescription and over-the-counter products; comments due by 11-1-05; published 9-1-05 [FR 05-17390]
Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Customs and Border Protection Bureau
Intelligence Reform and Terrorism Prevention Act of 2004; implementation:
Travel within Western Hemisphere; documents required; comments due by 10-31-05; published 9-1-05 [FR 05-17533]
Organization and functions; field organization, ports of entry, etc.:
Sacramento, CA, port establishment; San Francisco, CA, port limits realignment; comments due by 11-1-05; published 9-2-05 [FR 05-17536]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
Louisiana; comments due by 11-1-05; published 9-2-05 [FR 05-17510]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties; Open for comments until further notice; published 8-5-05 [FR 05-15251]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
Findings on petitions, etc.—
Yellowstone cutthroat trout; comments due by 10-31-05; published 9-1-05 [FR 05-17455]
Picture-wing flies (12 species) from Hawaiian Islands; comments due by 11-3-05; published 10-4-05 [FR 05-19594]
Importation, exportation, and transportation of wildlife:
Injurious wildlife—
Black carp; comments due by 10-31-05; published 8-30-05 [FR 05-17173]
Refuge-specific public use regulations:
Kodiak National Wildlife Refuge, AK; comments due by 10-31-05; published 9-30-05 [FR 05-19570]

LABOR DEPARTMENT
Employee Benefits Security Administration
Employee Retirement Income Security Act:
Annual reports; electronic filing requirements; comments due by 10-31-05; published 8-30-05 [FR 05-17185]

NUCLEAR REGULATORY COMMISSION
Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

OFFICE OF MANAGEMENT AND BUDGET
Management and Budget Office
Grants, other financial assistance, and nonprocurement agreements; governmentwide guidance:
Governmentwide debarment and suspension (nonprocurement); Federal agency guidance; comments due by 10-31-05; published 8-31-05 [FR 05-16647]

POSTAL SERVICE
Domestic Mail Manual:
Preparation standards for bundles of mail on pallets; comments due by 10-31-05; published 9-30-05 [FR 05-19531]

SECURITIES AND EXCHANGE COMMISSION
Securities, etc.:
Sarbanes-Oxley Act of 2002; implementation—
Exchange Act periodic reports; inclusion of management's report on internal control over financial reporting and certification disclosure; comments due by 10-31-05; published 9-29-05 [FR 05-19426]
Securities:
Annual and quarterly reports; accelerated filer definition and accelerated filing deadlines; comments due by 10-31-05; published 9-29-05 [FR 05-19427]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]
HUBZone program:
Government contracting, 8(a) business development, and small business size standard programs; comments due by 10-31-05; published 8-30-05 [FR 05-17206]

STATE DEPARTMENT
Intelligence Reform and Terrorism Prevention Act of 2004; implementation:
Travel within Western Hemisphere; documents required; comments due by 10-31-05; published 9-1-05 [FR 05-17533]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Debarment and suspension (nonprocurement); governmentwide requirements; comments due by 11-4-05; published 10-5-05 [FR 05-19965]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:

Washington, DC, metropolitan special flight rules area; certain aircraft operations flight restrictions; comments due by 11-2-05; published 8-4-05 [FR 05-15375]
Correction; comments due by 11-2-05; published 8-24-05 [FR 05-16781]
Airworthiness directives:
Boeing; comments due by 10-31-05; published 9-15-05 [FR 05-18319]
Dassault; comments due by 10-31-05; published 9-30-05 [FR 05-19566]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-31-05; published 9-29-05 [FR 05-19238]
General Electric Co.; comments due by 10-31-05; published 9-1-05 [FR 05-17400]
McDonnell Douglas; comments due by 10-31-05; published 9-16-05 [FR 05-18401]
Sabreliner; comments due by 10-31-05; published 9-14-05 [FR 05-18209]
Airworthiness standards:
Special conditions—
Boeing Model 720B high intensity radiated fields; comments due by 11-3-05; published 10-4-05 [FR 05-19858]
Dassault-Aviation Mystere-Falcon 50 airplanes; comments due by 11-3-05; published 10-4-05 [FR 05-19860]
Raytheon Model BH125 Series 400A and 600A airplanes; comments due by 11-3-05; published 10-4-05 [FR 05-19859]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Child restraint systems—
Booster seats and restraints for children weighing more than 50 lbs.; comments due by 10-31-05; published 8-31-05 [FR 05-17218]
Motor homes and travel trailers over 10,000 pounds; cargo carrying capacity; comments due by 10-31-05; published 8-31-05 [FR 05-17245]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Simplified service cost method and simplified production method; cross-reference; comments due by 11-1-05; published 8-3-05 [FR 05-15362]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3971/P.L. 109–91

QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005 (Oct. 20, 2005; 119 Stat. 2091)

Last List October 20, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.