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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 400 to 699, revised as of January 1, 2005, in § 457.8, on page 101, under ''Definitions'' remove the first definition of *Approved yield*.

[FR Doc. 05–55516 Filed 11–3–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV05–987–1 FR]

Domestic Dates Produced or Packed in Riverside County, CA; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Date Administrative Committee (committee) for the 2005–06 and subsequent crop years from $0.85 to $0.95 per hundredweight of dates handled. The committee locally administers the marketing order which regulates the handling of dates produced or packed in Riverside County, California. Assessments upon date handlers are used by the committee to fund reasonable and necessary expenses of the program. The committee recommended increasing the assessment rate because additional revenues are needed to fund program operations and build up its financial reserve to a more satisfactory level. The crop year began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Dates:* November 5, 2005.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate herein would be applicable to all assessable dates beginning on October 1, 2005, and continue until amended, suspended, or terminated. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this final rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the committee for the 2005–06 and subsequent crop years from $0.85 to $0.95 per hundredweight of assessable dates handled.

The order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and producer-handlers of California dates. They are familiar with the committee's needs and with the costs for goods and services in their local area; and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Therefore, all directly affected persons had an opportunity to participate and provide input.

For the 2004–05 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that will continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on June 16, 2005, and unanimously recommended 2005–06 crop year expenditures of $169,197 and an assessment rate of $0.95 per hundredweight of dates handled. In

comparison, last year's budgeted expenditures were $223,000. The recommended assessment rate of $0.95 is $0.10 higher than the rate currently in effect. The increase in the assessment rate is needed to fund the committee's budget and maintain an acceptable operating reserve.

Proceeds from sales of cull dates are deposited in a surplus account for subsequent use by the committee in covering the surplus pool share of the committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the committee for sale to non-human food product outlets. Pursuant to § 987.72(b), the committee is authorized to temporarily use funds derived from assessments to defray expenses incurred in disposing of surplus dates. All such expenses are required to be deducted from proceeds obtained by the committee from the disposal of surplus dates. For the 2005–06 crop year, the committee estimated that $2,000 from the surplus account would be needed to refund assessments used in paying committee expenses incurred in disposing of surplus dates.

The budgeted administrative expenses for the 2005–06 crop year include $85,697 for labor and office expenses. This compares to $90,427 in labor and office expenses in 2004–05. In addition, $70,000 has been budgeted for marketing and promotion under the program for the 2005–06 crop year. This compares to $112,499 in budgeted marketing and promotion expenses for the 2004–05 crop year. The committee also proposed that $10,000 be included in its 2005–2006 budget for an economic analysis of its promotion activities. Last year's budget did not include funds for this purpose.

The proposed rule erroneously indicated that the committee's 2005–06 budget included a line item for a contingency reserve. However, the $14,303 figure is the committee's estimate of reserve funds that would be available at the end of the 2005–06 crop year. Additionally, last year's budget included a line item for a contingency reserve of $20,074.

The assessment rate of $0.95 per hundredweight of assessable dates was derived by applying the following formula where:

A = 2004–05 reserve on 10/1/05 ($1,000).

B = 2005–06 reserve on 9/30/06 ($14,303).

C = 2005–06 expenses ($169,197).

D = Cull Surplus Fund ($2,000).

E = 2005–06 expected shipments (190,000 hundredweight).

$(B - A + C - D) \div E = \$0.95$ per hundredweight.

Estimated shipments should provide $180,500 in assessment income. Income derived from handler assessments and $2,000 from the cull surplus fund will be adequate to cover budgeted expenses. Funds in the reserve are expected to total about $14,303 by September 30, 2006, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years as required under § 987.72(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The committee's 2005–06 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 124 producers of dates in the production area and approximately 10 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $6,000,000.

An industry profile shows that four of the 10 handlers (40 percent) had date sales over $6,000,000 and could be considered large handlers by the Small Business Administration. Six of the 10 handlers (60 percent) had date sales of less than $6,000,000 and could be considered small handlers. An estimated 7 producers, or less than 6 percent, of the 124 total producers, would be considered large producers with annual incomes over $750,000. The remaining producers have incomes less than $750,000. The majority of handlers and producers of California dates may be classified as small entities.

This final rule increases the assessment rate established for the committee and collected from handlers for the 2005–06 and subsequent crop years from $0.85 to $0.95 per hundredweight of assessable dates handled. The committee unanimously recommended 2005–06 expenditures of $169,197 and the $0.95 per hundredweight assessment rate at its meeting on June 16, 2005. The assessment rate of $0.95 is $0.10 higher than the rate currently in effect. The quantity of assessable dates for the 2005–06 crop year is estimated at 190,000 hundredweight. Thus, the $0.95 per hundredweight rate should provide $180,500 in assessment income. This, along with approximately $2,000 from the surplus account, will be adequate to meet the committee's 2005–06 crop year expenses and to augment its financial reserve.

The budgeted administrative expenses for the 2005–06 crop year include $85,697, for labor and office expenses. This compares to $90,427 in labor and office expenses in 2004–05. In addition, $70,000 has been budgeted for marketing and promotion under the program for the 2005–06 crop year. This compares to $112,499 in budgeted marketing and promotion expenses for the 2004–05 crop year. The committee also proposed that $10,000 be included in the budget for an economic analysis of its promotion program for the 2005–06 crop year, as required by USDA. A total of $14,303 is estimated to be carried over as a financial reserve at the end of 2005–06.

The committee reviewed and unanimously recommended 2005–06 expenditures of $169,197 which include

marketing and promotion programs. Prior to arriving at this budget, the committee considered alternative expenditure levels and alternative assessment levels. The committee agreed that the increased assessment rate was appropriate to cover expenses and build up its operating reserve to a satisfactory level ($14,303). The assessment rate of $0.95 per hundredweight of assessable dates was then determined by applying the following formula where:

A = 2004–05 reserve on 10/1/05 ($1,000).

B = 2005–06 reserve on 9/30/06 ($14,303).

C = 2005–06 expenses ($169,197).

D = Cull Surplus Fund ($2,000).

E = 2005–06 expected shipments (190,000 hundredweight).

$(B - A + C - D) \div E = \$0.95$ per hundredweight.

Estimated shipments should provide $180,500 in assessment income. Income derived from handler assessments and $2,000 from the cull surplus fund would be adequate to cover budgeted expenses. Funds in the administrative reserve are expected to total about $14,303 by September 30, 2006, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years as required under § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2005–06 season could range between $45 and $50 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2005–06 crop year as a percentage of total grower revenue is approximately 2 percent.

This action increases the assessment obligation imposed on handlers under the Federal marketing order. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the June 16, 2005, meeting was a public meeting and all entities were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on September 12, 2005 (70 FR 53737). Copies of the rule were mailed or sent via facsimile to all date handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending October 12, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005–06 crop year began on October 1, 2005, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2005, an assessment rate of $0.95 per hundredweight is established for California dates.

Dated: October 31, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–22046 Filed 11–3–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 236, 239, 241 and 287

[ICE No. 2298–03]

RIN 1653–AA27

Powers and Authority of Officers and Employees

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule continues the process of conforming the text of the Code of Federal Regulations to the governmental structures established in the Homeland Security Act and Reorganization Plan. This rule is not intended to and does not restrict or otherwise limit the authority of any Department of Homeland Security officer.

DATES: This final rule is effective November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Jack Penca, Chief Counsel, Law Enforcement Support Center; 188 Harvest Lane, Williston,Vermont 05495; telephone number: (802) 872–6056.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135) (HSA), 6 U.S.C. 101 *et seq.*, which created the new Department of Homeland Security (Department or DHS). Pursuant to the provisions of the HSA, DHS came into existence on January 24, 2003. The functions of the

Immigration and Naturalization Service (Service) and all authorities with respect to those functions, transferred to DHS on March 1, 2003, and the Service was abolished on that date, pursuant to the HSA and the Department of Homeland Security Reorganization Plan, as modified (Reorganization Plan). The transition and savings provisions of the HSA, including sections 1512(d) and 1517 of the HSA, 6 U.S.C. 552(d), 557, provide that references relating to the Service in statutes, regulations, directives or delegations of authority shall be deemed to refer to the appropriate official or component of DHS.

This rule amends various lists of DHS officials authorized to perform certain immigration enforcement functions, including making administrative arrests for immigration violations, making custody determinations, issuing Notices to Appear (which set forth the charges against an alien and order the alien to appear before an immigration judge), and issuing Warrants of Removal (which authorize the removal of an alien from the United States after the issuance of a final administrative order). While this rule constitutes a delegation of authority, and constitutes a public statement thereof, it is not the only means by which such authority may be delegated by the Secretary pursuant to 8 CFR 2.1. The Secretary retains the authority to further delegate immigration authorities and functions through internal directives, memoranda, or other means. See Id. This rule does not alter any other delegation of authority by the Secretary that is not addressed in the rule. The rule does not affect any rights of aliens or the general public. *See* 8 CFR 287.12.

Explanation of Changes

This final rule:

(1) Amends 8 CFR 236.1 to set forth a list of officers authorized to issue and serve Form I–286, Notice of Custody Determination.

(2) Amends 8 CFR 239.1 to revise the list of officers authorized to issue a Notice to Appear, which sets forth the immigration charges against the alien.

(3) Amends 8 CFR 241.2 to revise the list of officers authorized to issue

Warrants of Removal, which authorizes the removal of an alien from the United States after a final administrative order is entered.

(4) Amends 8 CFR 287.5(e)(2) to revise the list of officers authorized to issue an administrative Warrant of Arrest for immigration violations.

Administrative Procedure Act

This rule relates to agency organization and management and is exempt from the notice of proposed rulemaking and delayed effective date requirements of the Administrative Procedure Act, 5 U.S.C. 553(a).

Executive Order 12866

This rule is limited to agency organization and management and therefore is not a rule as defined by Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. 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 significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal government, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 239

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 287

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 1. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101, *et seq.*); 8 CFR part 2.

■ 2. Section 236.1 is amended by adding a new paragraph (g) to read as follows:

§ 236.1 Apprehension, custody, and detention.

* * * * *

(g) *Notice of custody determination.* (1) *In general.* At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, an immigration official may issue a Form I–286, Notice of Custody Determination. A notice of custody determination may be issued by those immigration officials listed in 8 CFR 287.5(e)(2) and may be served by those immigration officials listed in 8 CFR 287.5(e)(3), or other officers or employees of the Department or the United States who are delegated the authority to do so pursuant to 8 CFR 2.1.

(2) *Cancellation.* If after the issuance of a notice of custody determination, a determination is made not to serve it, any official authorized to issue such notice may authorize its cancellation.

PART 239—INITIATION OF REMOVAL PROCEEDINGS

■ 3. The authority citation for part 239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101, *et seq.*); 8 CFR part 2.

■ 4. Section 239.1 is amended by:
■ a. Revising paragraphs (a)(37) and (a)(38); and by
■ b. Adding paragraphs (a)(39) through (a)(41).

The revisions and additions read as follows:

§ 239.1 Notice to appear.

(a) * * *

* * * * *

(37) Deputy port directors;

(38) Supervisory service center adjudications officers;

(39) Unit Chief, Law Enforcement Support Center;

(40) Section Chief, Law Enforcement Support Center; or

(41) Other officers or employees of the Department or of the United States who are delegated the authority as provided by 8 CFR 2.1 to issue notices to appear.

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

■ 5. The authority citation for part 241 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1228, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101, *et seq.*); 8 CFR part 2.

■ 6. Section 241.2 is revised to read as follows:

§ 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal.* (1) *In general.* A Form I–205, Warrant of Removal, based upon the final administrative removal order in the alien's case shall be issued by any of the following immigration officials:

(i) Director, Detention and Removal Operations;

(ii) Deputy Assistant Director, Field Operations;

(iii) Field Office Directors;

(iv) Deputy Field Office Directors;

(v) Assistant Field Office Directors;

(vi) Officers in Charge;

(vii) Special Agents in Charge;

(viii) Deputy Special Agents in Charge;

(ix) Associate Special Agents in Charge;

(x) Assistant Special Agents in Charge;

(xi) Group Supervisors;

(xii) Resident Agents in Charge;

(xiii) District Field Officers;

(xiv) Chief Patrol Agents;

(xv) Deputy Chief Patrol Agents;

(xvi) Assistant Chief Patrol Agents;

(xvii) Patrol Agents in Charge;

(xviii) Unit Chief, Law Enforcement Support Center;

(xix) Section Chief, Law Enforcement Support Center;

(xx) Port Directors;

(xxi) Deputy Port Directors;

(xxii) Assistant Port Directors;

(xxiii) Director, Field Operations;

(xxiv) Deputy Director, Field Operations;

(xxv) Assistant Director, Field Operations; and

(xxvi) Other officers or employees of the Department or the United States who are delegated the authority as provided in 8 CFR 2.1 to issue Warrants of Removal.

(2) *Costs and care during removal.* The immigration officials listed in paragraphs (a)(1)(i) through (xxv) of this section, and other officers or employees of the Department or the United States who are delegated the authority as provided in 8 CFR 2.1, shall exercise the authority contained in section 241 of the Act to determine at whose expense the alien shall be removed and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

(b) *Execution of the warrant of removal.* Any officer authorized by 8 CFR 287.5(e)(3) to execute administrative warrants of arrest may execute a warrant of removal.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

■ 7. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101, *et seq.*); 8 CFR part 2.

■ 8. Section 287.5(e)(2) is revised to read as follows:

§ 287.5 Exercise of power by immigration officers.

* * * * *

(e) * * *

(2) *Issuance of arrest warrants for immigration violations.* A warrant of arrest may be issued by any of the following immigration officials who have been authorized or delegated such authority:

(i) District directors (except foreign);

(ii) Deputy district directors (except foreign);

(iii) Assistant district directors for investigations;

(iv) Deputy assistant district directors for investigations;

(v) Assistant district directors for deportation;

(vi) Deputy assistant district directors for deportation;

(vii) Assistant district directors for examinations;

(viii) Deputy assistant district directors for examinations;

(ix) Officers in charge (except foreign);

(x) Assistant officers in charge (except foreign);

(xi) Chief patrol agents;

(xii) Deputy chief patrol agents;

(xiii) Assistant chief patrol agents;

(xiv) Patrol agents in charge;

(xv) Assistant patrol agents in charge;

(xvi) Field operations supervisors;

(xvii) Special operations supervisors;

(xviii) Supervisory border patrol agents;

(xix) The Assistant Commissioner, Investigations;

(xx) Institutional Hearing Program directors;

(xxi) Area port directors;

(xxii) Port directors;

(xxiii) Deputy port directors;

(xxiv) Assistant Area port directors;

(xxv) Supervisory deportation officers;

(xxvi) Supervisory detention and deportation officers;

(xxvii) Group Supervisors;

(xxviii) Director, Office of Detention and Removal Operations;

(xxix) Special Agents in Charge;

(xxx) Deputy Special Agents in Charge;

(xxxi) Associate Special Agents in Charge;

(xxxii) Assistant Special Agents in Charge;

(xxxiii) Resident Agents in Charge;

(xxxiv) Field Office Directors;

(xxxv) Deputy Field Office Directors;

(xxxvi) District Field Officers;

(xxxvii) Supervisory district adjudications officers;

(xxxviii) Supervisory asylum officers;

(xxxix) Supervisory special agents;

(xl) Director of investigations;

(xli) Directors or officers in charge of detention facilities;

(xlii) Directors of field operations;

(xliii) Deputy or assistant directors of field operations;

(xliv) Unit Chief, Law Enforcement Support Center;

(xlv) Section Chief, Law Enforcement Support Center;

(xlvi) Director, Field Operations;

(xlvii) Deputy Director, Field Operations;

(xlviii) Assistant Director, Field Operations;

(xlix) Immigration Enforcement Agents; or

(l) Other officers or employees of the Department or the United States who are delegated the authority as provided in 8 CFR 2.1 to issue warrants of arrest.

* * * * *

Dated: October 17, 2005.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. 05–21980 Filed 11–3–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 503, 542, and 543

[BOP–1136–I]

RIN 1120–AB36

Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers: Removal of Addresses From Rules

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) removes its rules listing the addresses of Bureau facilities in each of its regions. We will replace these rules with a short description of the Bureau's structure, the address of the Bureau's Central Office, and a reference to the Bureau's internet address containing current and frequently updated contact information on Bureau facilities and Regional Offices. This change will enable the Bureau to more quickly and accurately provide updated contact information to members of the public, in light of frequently changing circumstances.

DATES: This rule is effective November 4, 2005. Please send comments on this rulemaking by January 3, 2006.

ADDRESSES: Our e-mail address is *BOPRULES@BOP.GOV*. Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov.* You may also comment via the Internet to BOP at *BOPRULES@BOP.GOV* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons removes its rules listing the addresses of Bureau facilities in each of its regions. We will replace these rules with a short description of the Bureau's structure, the address of the Bureau's Central Office, and a reference to the Bureau's Web site containing current and frequently updated contact information on Bureau facilities and Regional Offices.

This change will enable the Bureau to more quickly and accurately provide updated contact information to members of the public, in light of frequently changing circumstances. Before 1990, the Bureau published lists of the addresses of its facilities as Notices in the **Federal Register**. On July 23, 1990, we published the list of addresses as a federal rule (55 FR 29990). We amended it in 1991 (56 FR 31531), 1992 (57 FR 53822), 1993 (58 FR 44428), and 1998. Frequently changing circumstances have made it difficult to quickly update the list of addresses. Between 1998 (the date this rule was last amended) and March, 2005, the number of Bureau facilities grew from 93 to 113. This rule change would allow the Bureau to reference our Web site, which we can update far more quickly and accurately, for the most current addresses and other contact information of all Bureau facilities.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Further, section 553(d) provides an exception to the usual requirement of a delayed effective date when an agency finds ''good cause'' that the rule be made immediately effective.

This rulemaking is exempt from normal notice-and-comment procedures because advance notice and public comment in this instance is unnecessary. This is an administrative rule insignificant in impact and inconsequential to the public. The rule merely eliminates a long list of non-current addresses and replaces them with a reference to a publicly accessible and more accurate source. This rulemaking makes no change to any rights or responsibilities of the agency or any regulated entities. For the same reasons, the Bureau finds that ''good cause'' exists to make this rule effective upon publication.

Nevertheless, the Bureau invites public comment on this interim rule.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons. This rule will enable the Bureau to more quickly and accurately provide updated contact information to members of the public and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

28 CFR Part 503

Prisoners.

28 CFR Part 542

Administrative practice and procedure, Prisoners.

28 CFR Part 543

Claims, Lawyers, Legal services, Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR chapter V as set forth below.

Subchapter A—General Management and Administration

■ 1. Revise part 503 to read as follows:

PART 503—BUREAU OF PRISONS CENTRAL OFFICE, REGIONAL OFFICES, INSTITUTIONS AND STAFF TRAINING CENTERS

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4003, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

§ 503.1 Structure of the Bureau of Prisons.

The Bureau of Prisons consists of a Central Office, located at 320 First Street, NW., Washington, DC 20534, a Staff Training Center, and six Regional Offices (Northeast, Mid-Atlantic, Southeast, North Central, South Central, and Western). For further information, please contact the Central Office at the address referenced, or visit *www.bop.gov* for a complete list of contact information for Bureau Regional Offices and facilities.

Subchapter C—Institutional Management

PART 542—ADMINISTRATIVE REMEDY

■ 2. The authority citation for 28 CFR part 542 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

§ 542.15 [Amended]

■ 3. In § 542.15(b)(3), delete the phrase ''for addresses of the Central Office and Regional Offices'' in the parenthetical in the final sentence and insert ''for information on locating Bureau addresses'' in its place.

Subchapter C—Institutional Management

PART 543—LEGAL MATTERS

■ 4. The authority citation for 28 CFR part 543 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510, 1346(b), 2671–80, 28 CFR 0.95–0.99, 0.172, 14.1–11.

■ 5. In § 543.31(c), revise the last sentence to read as follows:

§ 543.31 Filing a claim.

* * * * *

(c) * * * 28 CFR part 503 contains information on locating Bureau of Prisons addresses.

[FR Doc. 05–21966 Filed 11–3–05; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 522

[BOP–1113–F]

RIN 1120–AB13

Civil Contempt of Court Commitments: Revision To Accommodate Commitments Under the D.C. Code

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) revises its rules on Civil Contempt of Court Commitments to include references to relevant D.C. Code provisions regarding civil contempt commitments. We make this revision to accommodate D.C. Code offenders in Bureau institutions or Bureau contract facilities under the National Capital Revitalization and Self-Government Improvement Act of 1997 (D.C. Revitalization Act), D.C. Code section 24–101(a) and (b). We also revise this rule to clarify existing provisions by using simpler organization and language. For further simplification, we remove language relating solely to internal agency practices and procedures. We do not, however, make any substantive changes to the current rules.

DATES: This rule is effective December 5, 2005.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: Through this rule, the Bureau revises its regulations in 28 CFR part 522, on Civil Contempt of Court Commitments (civil contempt commitments). We make this rule to comply with the D.C. Revitalization Act, enacted August 5, 1997. This Act makes the Bureau responsible for the ''custody, care, subsistence, education, treatment and training'' of ''the felony population sentenced pursuant to the District of Columbia Code'' (D.C. Code offenders). (D.C. Code section 24–101 (a) and (b).)

As a result of absorbing approximately 8,000 D.C. Code offenders, we revise our rules on Civil Contempt of Court Commitments to address D.C. Code offenders.

We also revise this rule to clarify existing provisions by using simpler organization and language. To clarify section 522.11, which is long and unnecessarily complex, we divided it into five separate rules with clearer headings. For further simplification, we remove language relating solely to internal agency practices and procedures. We do not, however, make any substantive changes to the current rules.

Comments: We published this as a proposed rule on October 6, 2003 (68 FR 46138). We received one comment in support of this rule. The commenter suggested that we ''include references to relevant DC Code provisions regarding civil contempt commitments.'' The commenter posited that without ''relevant DC Code provisions,'' ''DC Code section 24–101(a) and (b) cannot be properly implemented.''

The proposed rules published on October 6, 2003, describe procedures for Federal civil contempt commitments. There is no need to cite, in rule text, to the particular D.C. Code section regarding civil contempt commitments (D.C. Code section 11–944) because this type of commitment also arises from a Federal court. Further, contrary to the commenter's assertion, the text of the rules effectively implement the D.C. Revitalization Act, which gives the Bureau authority over D.C. Code offenders in Bureau custody in accordance with the D.C. Code, without citing to the specific D.C. Code section that discusses civil contempt commitments.

We therefore finalize the proposed rules published on October 6, 2003, with minor changes to the titles/headings of each regulation.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a federalism assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 522

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 522 as follows.

Subchapter B—Inmate Admission, Classification, and Transfer

PART 522—ADMISSION TO INSTITUTION

■ 1. Revise the authority citation for 28 CFR part 522 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (Repealed November 1, 1987 as to offenses committed on or after that date), 3585, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166, (repealed October 12, 1984, as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; D.C. Code § 24–101(b).

■ 2. Revise Subpart B to read as follows:

Subpart B—Civil Contempt of Court Commitments

Sec.
522.10 Purpose.
522.11 Civil contempt commitments.
522.12 Relationship between existing criminal sentences imposed under the U.S. or D.C. Code and new civil contempt commitment orders.
522.13 Relationship between existing civil contempt commitment orders and new criminal sentences imposed under the U.S. or D.C. Code.
522.14 Inmates serving civil contempt commitments.
522.15 No good time credits for inmates serving only civil contempt commitments.

Subpart B—Civil Contempt of Court Commitments

§ 522.10 Purpose.

(a) This subpart describes the procedures for federal civil contempt of court commitments (civil contempt commitments) referred to the Bureau of Prisons (Bureau). These cases are not commitments to the custody of the Attorney General for service of terms of imprisonment following criminal convictions.

(b) We cooperate with the federal courts to implement civil contempt commitments by making our facilities and resources available. When we receive notification from the federal court that the reason for the civil contempt commitment has ended or that the inmate is to be released for any other reason, we will terminate the inmate's civil contempt commitment.

§ 522.11 Civil contempt commitments.

Inmates can come into Bureau custody for civil contempt commitments in two ways:

(a) The U.S. Marshals Service may request a designation from the Bureau for a civil contempt commitment if local jails are not suitable due to medical, security or other reasons; or

(b) The committing court may specify a Bureau institution as the place of incarceration in its contempt order. We will designate the facility specified in the court order unless there is a reason for not placing the inmate in that facility.

§ 522.12 Relationship between existing criminal sentences imposed under the U.S. or D.C. Code and new civil contempt commitment orders.

If a criminal sentence imposed under the U.S. Code or D.C. Code exists when a civil contempt commitment is ordered, we delay or suspend credit towards service of the criminal sentence for the duration of the civil contempt commitment, unless the committing judge orders otherwise.

§ 522.13 Relationship between existing civil contempt commitment orders and new criminal sentences imposed under the U.S. or D.C. Code.

(a) Except as stated in (b), if a civil contempt commitment order is in effect when a criminal sentence of imprisonment is imposed under the U.S. or D.C. Code, the criminal sentence runs consecutively to the commitment order, unless the sentencing judge orders otherwise.

(b) *For federal criminal sentences imposed for offenses committed before November 1, 1987, under 18 U.S.C. Chapter 227:* If a civil contempt commitment order is in effect when a criminal sentence of imprisonment is imposed, the criminal sentence runs concurrent with the commitment order, unless the sentencing judge orders otherwise.

§ 522.14 Inmates serving civil contempt commitments.

We treat inmates serving civil contempt commitments in Bureau institutions the same as pretrial inmates. If an inmate is serving a civil contempt commitment and a concurrent criminal sentence, we treat the inmate the same as a person serving a criminal sentence.

§ 522.15 No good time credits for inmates serving only civil contempt commitments.

While serving only the civil contempt commitment, an inmate is not entitled to good time sentence credit.

[FR Doc. 05–21968 Filed 11–3–05; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL66

Patients' Rights

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Veterans Affairs (VA) medical regulations to update the patients' rights regulation by bringing its provisions regarding medication, restraints, and seclusion into conformity with current law and practice. The changes are primarily intended to clarify that it is permissible for VA patients to receive medication prescribed by any appropriate health care professional authorized to prescribe medication, and that it is permissible for any authorized licensed health care professional to order the use of restraints and seclusion when necessary. The rule also makes nonsubstantive changes in the patients' rights regulation for purposes of clarification.

DATES: *Effective Date:* December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Drake, Program Director (108), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–9237. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 9, 2004 (69 FR 48184), we published a proposed rule amending VA's medical regulations at 38 CFR part 17 to update the patients' rights regulation by bringing its provisions regarding medication, restraints, and seclusion into conformity with current law and practice. We provided a 60-day comment period that ended on October 8, 2004. We received four comments. Based on the rationale set forth in the proposed rule and this document, we are adopting the proposed rule as a final rule.

One commenter expressed support for expanding the scope of health care professionals authorized to prescribe medication, and recognizing that licensed health care professionals other than physicians are authorized to order seclusion and restraint. The commenter expressed concern, however, that the reference to ''appropriate licensed health care professional'' might be interpreted as requiring that the authority to order restraint and seclusion be granted in the State licensing law rather than in some other State law. The commenter states that this is a crucial distinction because the authority for psychologists to order restraint and seclusion is not necessarily found in State licensing laws. The commenter asserts that such authority may be found in State laws governing health care institutions, or identifying patients' rights. The commenter recommends clarifying this point in the preamble to the regulation.

With regard to this issue, we note that the reference in the regulation to an ''appropriate licensed health care professional'' was not intended to require that the authority of a health care professional to order restraint and seclusion be specifically contained in State licensing law, or any State law, for that matter. Licensed health care professionals working in VA facilities may order the use of restraints and seclusion consistent with Federal, not State law. VA determines which health care providers are deemed ''appropriate licensed health care professionals'' for purposes of ordering restraint and seclusion through the privileging and credentialing process as outlined in VA policies and handbooks. No changes are made based on this comment.

One commenter opposed the rule because it would eliminate all references to physicians and replace those references with the words ''appropriate licensed health care professional.'' The commenter stated that there are clear and convincing differences between the training and education of physicians and other health care professionals, and that physicians should oversee the care of patients. The commenter states that although this can be done using a team approach, the physician should provide the diagnosis and determine the course of treatment. The commenter expressed concern with the expanding scope of practice for non-physician providers within the Veterans Health Administration and throughout the health care delivery system.

VA's policy is to provide high quality health care to patients. This is accomplished through the proper utilization of a variety of well-qualified and appropriately credentialed health care providers. In VA, non-physician health care providers commonly provide a diagnosis for patients and determine the course of treatment within their scope of practice. Nationwide, written VA policy establishes medication-prescribing authority for Clinical Nurse Specialists, Nurse Practitioners, Clinical Pharmacy Specialists, and Physicians Assistants. Written VA policy requires that procedures be in place to ensure that these practitioners are prescribing within their identified scope of practice, and licensure when appropriate, and that the scope of practice for credentialed health care providers is approved in accordance with written VHA policy. No changes are made based on these comments.

Two commenters expressed support for the proposed revision to this regulation. No changes are made based on these comments.

One nonsubstantive clarifying change has been made to this final rule. Longstanding provisions in § 17.33(e) require that an attending physician review the drug regimen of each patient at least every thirty days. In this final rule we are changing ''patient'' to ''inpatient'' to more clearly reflect the scope of this provision. This change does not alter the scope of the rule but merely clarifies VA's intent and longstanding interpretation that the thirty-day requirement is specific to inpatient treatment. As explained in the notice of proposed rulemaking, we are further clarifying that the review must be conducted by an appropriate health care provider.

Based on the rationale set forth in the proposed rule and this document, VA is adopting the provisions of the proposed rule as a final rule with the change noted above.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

VA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

VA concludes that this final rule does not meet the economic significance threshold of $100 million effect on the economy in any one year under section 3(f)(1). VA concludes, however, that this final rule is a significant regulatory action under the Executive Order since it raises novel legal and policy issues under section 3(f)(4).

Regulatory Flexibility Act

The Secretary of Veterans Affairs (VA) hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will affect only veterans receiving certain VA benefits and does not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for the Construction of State Homes; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: July 13, 2005

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.33 is amended by:

■ a. In paragraph (b) introductory text, removing ''paragraph (c)'' and adding, in its place, ''paragraphs (c) and (d)''.

■ b. In paragraphs (c)(1) introductory text, (c)(2) introductory text, and (c)(2)(iv), removing ''health or mental health professional'' and adding, in its place, ''health care professional''.

■ c. In paragraph (c)(1)(ii), removing ''detaining'' and adding, in its place, ''detailing''.

■ d. In paragraph (c)(2) introductory text, removing ''this paragraph'' and adding, in its place, ''paragraph (c) of this section''.

■ e. In paragraph (c)(3), removing ''(c)(1)'' and adding, in its place, ''(b)''.

■ f. In paragraph (c)(4), removing ''pursuant to this paragraph'', and adding, in its place, ''under paragraph (c) of this section''.

■ g. In paragraph (c)(5), removing ''orders'' and adding, in its place, ''orders under paragraph (c) of this section''.

■ h. Revising paragraphs (d)(1), (d)(2), and (e).

The revisions read as follows:

§ 17.33 Patients' rights.

* * * * *

(d) * * * (1) Each patient has the right to be free from physical restraint or seclusion except in situations in which there is a substantial risk of imminent harm by the patient to himself, herself, or others and less restrictive means of preventing such harm have been determined to be inappropriate or insufficient. Patients will be physically restrained or placed in seclusion only on the written order of an appropriate licensed health care professional. The reason for any restraint order will be clearly documented in the progress notes of the patient's medical record. The written order may be entered on the basis of telephonic authority, but in such an event, an appropriate licensed health care professional must examine the patient and sign a written order within an appropriate timeframe that is in compliance with current community and/or accreditation standards. In emergency situations, where inability to contact an appropriate licensed health care professional prior to restraint is likely to result in immediate harm to the patient or others, the patient may be temporarily restrained by a member of the staff until appropriate authorization can be received from an appropriate licensed health care professional . Use of restraints or seclusion may continue for a period of time that does not exceed current community and/or accreditation standards, within which time an appropriate licensed health care professional shall again be consulted to determine if continuance of such restraint or seclusion is required. Restraint or seclusion may not be used as a punishment, for the convenience of staff, or as a substitute for treatment programs.

(2) While in restraint or seclusion, the patient must be seen within appropriate timeframes in compliance with current community and/or accreditation standards:

(i) By an appropriate health care professional who will monitor and chart the patient's physical and mental condition; and

(ii) By other ward personnel as frequently as is reasonable under existing circumstances.

* * * * *

(e) *Medication.* Patients have a right to be free from unnecessary or excessive medication. Except in an emergency, medication will be administered only on a written order of an appropriate health care professional in that patient's medical record. The written order may be entered on the basis of telephonic authority received from an appropriate health care professional, but in such event, the written order must be countersigned by an appropriate health care professional within 24 hours of the ordering of the medication. An

appropriate health care professional will be responsible for all medication given or administered to a patient. A review by an appropriate health care professional of the drug regimen of each inpatient shall take place at least every thirty (30) days. It is recognized that administration of certain medications will be reviewed more frequently. Medication shall not be used as punishment, for the convenience of the staff, or in quantities which interfere with the patient's treatment program.

* * * * *

[FR Doc. 05–21976 Filed 11–3–05; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register
Vol. 70, No. 213
Friday, November 4, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV05–984–2 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Walnut Marketing Board (Board) for the 2005–06 and subsequent fiscal periods from $0.0094 to $0.0096 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year began August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 14, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Shereen Marino, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable walnuts beginning on August 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2005–06 and subsequent fiscal periods from $0.0094 to $0.0096 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 and subsequent fiscal periods, the Board recommended, and USDA approved, an assessment rate of $0.0094 per kernelweight of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 9, 2005, and unanimously recommended 2005–06 expenditures of $2,937,600 and an assessment rate of $0.0096 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,749,500. The assessment rate of $0.0096 per kernelweight pound of assessable walnuts is $0.0002 per pound higher than the rate currently in effect. The increased assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 340,000 tons (306,000,000 kernelweight pounds merchantable), and the budget is about 6.4 percent more than last year's budget. The crop is smaller than expected due to sunburn caused by warmer than

normal temperatures during the growing season. The higher assessment rate should generate sufficient income to cover anticipated 2005–06 expenses.

The following table compares major budget expenditures recommended by the Board for the 2004–05 and 2005–06 marketing years:

Budget expense categories	2004–05	2005–06
Administrative Staff/Field Salaries & Benefits	$332,000	$360,000
Travel/Board Expenses	69,000	80,000
Office Costs/Annual Audit	124,000	132,500
Program Expenses Including Research Controlled Purchases	5,000	5,000
Crop Acreage Survey		85,000
Crop Estimate	94,000	95,000
Production Research Director	76,500	75,000
Production Research	548,500	500,000
Domestic Market Development	1,393,500	1,550,000
Reserve for Contingency	107,000	55,100

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 306,000,000 kernelweight pounds which should provide $2,937,600 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2005–06 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of California walnuts subject to regulation under the marketing order and approximately 5,500 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $6,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Current industry information shows that 15 of the 50 handlers (30 percent) shipped over $6,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Thirty-five of the 50 walnut handlers (70 percent) shipped under $6,000,000 of merchantable walnuts and could be considered small handlers.

The number of large walnut growers (annual walnut revenue greater than $750,000) can be estimated as follows. According to the National Agricultural Statistics Service (NASS), the average yield per acre for 2002–04 is 1.457 tons. A grower with 420 acres would produce approximately 612 tons. The average of grower prices for 2002–04 (published by NASS) is $1,227 per ton. At that average price, the 612 tons produced on 420 acres would yield approximately $750,000 in annual revenue. The 2002 Agricultural Census indicated 56 percent of walnut farms were 500 acres or larger, which is close to the 420 acres required to produce $750,000 in revenue. Thus, it can be concluded that the number of large walnut farms in 2005 is still likely to be under one percent. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2005–06 and subsequent marketing years from $0.0094 per kernelweight pound of assessable walnuts to $0.0096 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2005–06 expenditures of $2,937,600 and an assessment rate of $0.0096 per kernelweight pound of assessable walnuts. The proposed assessment rate of $0.0096 is $0.0002 higher than the rate currently in effect. The quantity of assessable walnuts for the 2005–06 marketing year is estimated at 340,000 tons. Thus, the $0.0096 rate should provide $2,937,600 in assessment income and be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures and based on an estimated crop of 340,000 tons for the year (306,000,000 kernelweight pounds estimated merchantable).

The following table compares major budget expenditures recommended by the Board for the 2004–05 and 2005–06 fiscal years:

Budget expense categories	2004–05	2005–06
Administrative Staff/Field Salaries & Benefits	$332,000	$360,000
Travel/Board Expenses	69,000	80,000
Office Costs/Annual Audit	124,000	132,500
Program Expenses Including Research Controlled Purchases	5,000	5,000
Crop Acreage Survey	.....	85,000
Crop Estimate	94,000	95,000
Production Research Director	76,500	75,000
Production Research	548,500	500,000
Domestic Market Development	1,393,500	1,550,000
Reserve for Contingency	107,000	55,100

The Board reviewed and unanimously recommended 2005–06 expenditures of $2,937,600, which included an increase in audit expenses. Prior to arriving at this budget, the Board considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 306,000,000 kernelweight pounds which should provide $2,937,600 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

According to NASS, the season average grower prices for years 2003 and 2004 were $1,160 and $1,350 per ton respectively. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of between $.58 and $.68. Adjusting by a few cents above and below those prices ($0.55 to $0.70 per inshell pound) provides a reasonable price range within which the 2005–06 season average price is likely to fall. Dividing these inshell prices per pound by the 0.45 conversion factor designated in the order yields a 2005–06 price range estimate of $1.22 and $1.56 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0096 (per kernelweight pound) is divided into the low and high estimates of the price range. The estimated assessment revenue for the 2005–06 marketing year as a percentage of total grower revenue would likely range between .8 and .6 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 9, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2005–06 marketing year began on August 1, 2005, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis and; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 2005, an assessment rate of $0.0096 per kernelweight pound is established for California merchantable walnuts.

Dated: October 31, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–22047 Filed 11–3–05; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

RIN 3150–AH68

Implementation of a Dose Standard After 10,000 Years; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On September 8, 2005 (70 FR 53313), the U.S. Nuclear Regulatory Commission (NRC) published for public comment a proposed rule that would

amend its regulations governing the disposal of high-level radioactive wastes in a proposed geologic repository at Yucca Mountain, Nevada. The proposed rule would implement the U.S. Environmental Protection Agency's (EPA's) proposed standards for doses that could occur after 10,000 years but within the period of geologic stability. The comment period for EPA's proposed standards currently expires on November 21, 2005 (extended 30 days from October 21, 2005); the comment period for NRC's proposed rule currently expires on November 7, 2005.

A letter was received from U.S. Senators Harry Reid and John Ensign from the State of Nevada requesting that the comment period for NRC's proposed rule be extended to a total of 180 days, or at least past the date of EPA's 30-day extension. Another letter representing several citizen and environmental groups requested that the deadline for comments be extended to 180 days. In addition, a letter from the Agency for Nuclear Projects, on behalf of the State of Nevada, requested that NRC extend its comment period for an additional 30 days, consistent with EPA's 30-day extension of its comment period.

Given the interrelationship between these two proposed rules, and for consistency with the ongoing EPA rulemaking process, NRC has decided to extend the comment period for its rulemaking an additional 30 days to December 7, 2005, for a total comment period of 90 days. In vacating the compliance period in NRC's rule at 10 CFR part 63, the United States Court of Appeals for the District of Columbia Circuit has made clear that it is ''NRC's obligation under the [Energy Policy Act of 1992] to maintain licensing criteria that are consistent with the public health and safety standards promulgated by EPA.'' See *Nuclear Energy Institute, Inc.* v. *EPA,* 373 F.3d 1251, 1299 (D.C. Cir. 2004). Thus NRC's proposed rule, for the most part, simply implements EPA's proposed standards for doses that could occur after 10,000 years but within the period of geologic stability, and its final rule will need to implement any changes EPA may make with respect to its standards. NRC's proposed rule provides further detail for implementing the EPA standard in only two specific areas: A value to represent climate change after 10,000 years; and a requirement that calculations of radiation doses for workers use the same weighting factors that EPA is proposing for calculating individual doses to members of the public. A lengthy period of time should not be needed by potential commenters to address these issues. Hence the NRC's 30-day extension is believed to be appropriate.

DATES: The comment period has been extended and now expires on December 7, 2005. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH68) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

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

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.*

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

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

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7285, e-mail *tjm3@nrc.gov;* Janet Kotra, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6674, e-mail *jpk@nrc.gov;* or Frank Cardile, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6185, e-mail *fpc@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of November, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–22121 Filed 11–3–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22364; Directorate Identifier 2005–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1B, 1D and 1D1 Turboshaft Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Turbomeca Arriel 1B, 1D and 1D1 turboshaft engines. This proposed AD would require inspecting the 2nd stage nozzle guide vanes (NGV2) for wall thickness. This proposed AD results from one instance of a fractured 2nd stage turbine blade followed by an uncommanded engine shutdown. We are proposing this AD to detect and prevent perforation of the NGV2 that could cause fracture of a turbine blade that could result in an uncommanded engine in-flight shutdown.

DATES: We must receive any comments on this proposed AD by January 3, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22364; Directorate Identifier 2005–NE–26–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS 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 AD Docket

You may examine the docket that contains the proposal, 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 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 docket office receives them.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition might exist on certain Turbomeca S.A. Arriel 1B, 1D and 1D1 turboshaft engines. The affected engines are those modified to TU 202, except those having NGV2 vanes with serial numbers or specific marks identified in Turbomeca Mandatory Service Bulletin (MSB) No. 292 72 0231, Update No. 5, dated July 22, 2004. The DGAC advises that in order to detect and prevent a possible perforation of the NGV2, they are requiring inspection of the NGV2 for wall thickness. Perforation of the NGV2 could cause an aerodynamic wake upstream of the 2nd stage turbine. Such a wake could lead to the fracture of a 2nd stage turbine blade followed by an uncommanded engine in-flight shutdown. On a single-engine helicopter, this in-flight shutdown could lead to an emergency landing by autorotation or an accident.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca MSB No. 292 72 0231, Update No. 5, dated July 22, 2004, that describes procedures for removing each vane of the NGV2, checking the vane thickness, and replacing the NGV2 if the vane thickness is below the defined criteria. The DGAC classified this MSB as mandatory and issued airworthiness directive No. F–2004–088 R1, dated August 4, 2004, in order to ensure the airworthiness of these NGV2 vanes in France.

FAA's Determination and Requirements of the Proposed AD

These engines, manufactured in France, 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. In keeping with this bilateral airworthiness agreement, the DGAC kept us informed of the situation described above. We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. For this reason, we are proposing this AD, which would require inspection of the NGV2 wall thickness. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 2,000 Turbomeca Arriel 1B, 1D and 1D1 turboshaft engines of the affected design in the worldwide fleet. We estimate that this proposed AD would affect 571 engines installed on helicopters of U.S. registry. We also estimate that it would take about 0.5 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. No parts are required. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $18,558.

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Turbomeca: Docket No. FAA–2005–22364; Directorate Identifier 2005–NE–26–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 1B, 1D and 1D1 certain turboshaft engines, modified to TU 202. These engines are installed on, but not limited to, Eurocopter France AS350A, AS350B, AS350B1, and AS350B2 helicopters.

Unsafe Condition

(d) This AD results from one instance of a fractured 2nd stage turbine blade followed by an uncommanded engine shutdown. We are issuing this AD to detect and prevent perforation of the NGV2 that could cause fracture of a turbine blade that could result in an uncommanded engine in-flight shutdown.

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.

Inspect 2nd Stage Nozzle Guide Vanes (NGV2)

(f) At the next shop visit or the next accessibility of the NGV2 after the effective date of this AD, whichever occurs first, check the thickness of the material on each NGV2 using the Instructions to be Incorporated of Turbomeca Mandatory Service Bulletin (MSB) No. 292 72 0231, Update No. 5, dated July 22, 2004. Replace the NGV2 if the vane thickness is below the defined criteria.

(g) Inspections carried out before the effective date of this AD, using an earlier update of MSB No. 292 72 0231, are acceptable alternatives to the requirements of this AD.

(h) Information regarding NGV2's that have already had the actions required by this AD done and are exempt from the inspections using paragraph (e) of this AD can be found in MSB No. 292 72 0231, Update No. 5, dated July 22, 2004.

Definitions

(i) For the purposes of this AD the following definitions apply:

(1) A shop visit is defined as introduction of the engine into a shop for the purposes of deep maintenance and the separation of a major mating flange.

(2) Accessibility of the NGV2 is defined as removal of the NGV2 from the engine regardless of the location or reason for removal.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Engine 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

(k) DGAC airworthiness directive No. F–20040–088 R1 also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 31, 2005.

Francis A. Favara,

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

[FR Doc. 05–22007 Filed 11–3–05; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AG29

Age as a Factor in Evaluating Disability

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to revise the definitions of the age categories we use as one of the criteria in determining disability under titles II and XVI of the Social Security Act (the Act). The proposed changes reflect our adjudicative experience, advances in medical treatment and healthcare, changes in the workforce since we originally published our rules for considering age in 1978, and current and future increases in the full retirement age under Social Security law. The proposed changes would not affect the rules under part 404 of our regulations for individuals age 55 or older who have statutory blindness. They also would not affect our other rules that are dependent on age, such as the age at which you can qualify for early retirement benefits or for Medicare as a retired individual.

DATES: To be sure that your comments are considered, we must receive them no later than January 3, 2006.

ADDRESSES: You may give us your comments by: using our Internet site facility (i.e., Social Security Online) at *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment* or the Federal eRulemaking Portal at *http://www.regulations.gov;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830, or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 965–0020 or TTY 1–800–325–0778 for information about these proposed rules. For information on eligibility or filing for benefits, call our national toll-free number 1–(800) 772–1213 or TTY 1–(800) 325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION:

Why Are We Proposing To Revise the Definitions of the Age Categories We Use To Determine Disability?

In 1978, we established age categories for evaluating disability. Although we indicated at that time that creating the age categories was a ''pioneering effort'' on our part, we have not revisited our standards for effectiveness or accounted for changes in public health in over 25 years.

In response to significant changes in public health conditions, we have conducted an analysis of recent studies to determine what changes, if any, should be made to the current standards. We believe that it is now appropriate to redraw the lines established in 1978. Based on advances in medical treatment and healthcare, significant changes in the workforce, our adjudicative experience, and current and future increases in the full retirement age under Social Security law, we propose to revise our age categories by two years. This minimal increase is a reasonable adjustment to reflect public health factors which have had significant positive effects on the health of older workers and their ability to do other work.

Advances in medical treatment and healthcare have provided longer life expectancies and more healthy years for millions of Americans. In 1978, when we last published our rules, estimated life expectancy at birth was 73.5 years.[1] A child born today is expected to live to at least 77 years of age.[2] It is projected that life expectancy will continue to increase so that a child born in 2010 could be expected to live to be over 78 years of age.[3]

Not only are Americans living longer, but there is clear and overwhelming evidence that the average health of the elderly population is improving. As in 1978, there is no conclusive data that relate specific chronological ages to specific vocational limitations for performing and adapting to new jobs. However, researchers agree that chronic disability is a sensitive measure of age-related changes in the health and biological fitness of individuals.[4]

Recent studies have concluded that adults over age 65 are reporting continuing and significant improvements in their ability to perform activities of daily living, instrumental activities of daily living, and functional limitations. These three measurements are considered effective measures of old-age disability by researchers.[5] Three major surveys conducted within the last decade estimate that the average annual decline in disability among those over age 50 ranged from −1.55% to −0.92% per year during the 1990s.[6] In their seminal work titled *Changes in the Prevalence of Chronic Disability in the United States Black and non-Black Population Above Age 65 from 1982 to 1999,* Kenneth G. Manton and XiLang Gu concluded that percentage declines in disability increased in each five-year period between 1982 and 1999.[7] Additional studies, such as *Health, United States, 2003 Special Excerpt: Trend Tables on 65 and Older Population* published by the U.S. Department of Health and Human Services and *Older Americans 2004: Key Indicators of Well-Being* produced by the Federal Interagency Forum on Aging Related Statistics, report similar increases in reported functioning and overall health of those age 65 and over.[8]

Among adults over age 50, significant and consistent improvements have been reported with respect to functional limitations—defined as difficulty seeing words and letters in ordinary newspaper print, lifting and carrying 10 lbs, climbing a flight of stairs, and walking a quarter of a mile.[9] The results of a 1998 study conducted by Vicki A. Freedman and Linda G. Martin concluded that ''the older population today is significantly different from that of just a decade ago.'' [10] Functional limitations among those aged 50–64 improved by an average of 2.325% between 1984 and 1993, when adjusted for a variety of social factors, and 2.975% unadjusted.[11]

This increase in healthy, active years has already translated into a shift among older adults who are working past 65. It has been projected that labor force participation for workers age 55–64 will increase by five percent for men and nine percent for women between 2003 and 2012.[12] As Charles Leven, Chair of the AARP Board of Directors, stated, ''People are showing us that it's possible to work well into their 80s and 90s with no thought of retirement. And people of advanced age are showing us they can go to school—to learn new skills, develop abilities, [or] to train for a new profession.'' [13]

Economic and social changes have also increased opportunities for individuals with disabilities to participate in the workforce. In the 25 years since these rules were originally published, the economy has shifted toward service and knowledge-based jobs that may allow for greater participation for some persons with physical limitations.[14] Reports indicate that the percentage of workers in physically demanding jobs has dropped from about twenty percent in 1950 to less than eight percent in 1996.[15] The

[1] Elizabeth Arias, United States Life Tables, 2002, *National Vital Statistics Reports* 53, no. 6 (Hyattsville, MD: National Center for Health Statistics, 2004), 33.

[2] Id.

[3] U.S. Census Bureau, ''Vital Statistics,'' *Statistical Abstract of the United States: 2004–2005* (Washington, D.C.: 2005), 71. Available from: *http://www.census.gov/prod/2004pubs/04statab/vitstat.pdf.* Accessed 7 July 2005.

[4] Kenneth G. Manton and others, ''Chronic Disability Trends in the U.S. Elderly Populations 1982 to 1994,'' *Proceedings of the National Academy of Sciences* 94, no. 6 (March 18, 1997): 2593. Available from: *http://www.pubmedcentral.nih.gov/articlerender.fcgi?tool=pubmed&pubmedid=9122240.* Accessed 29 June 2005.

[5] See generally Vicki A. Freedman and others, ''Recent Trends in Disability and Functioning among Older Adults in the United States: A Systematic Review,'' *Journal of the American Medical Association* 288, no. 24 (December 25, 2002).

[6] Ibid., 3144.

[7] Kenneth G. Manton and XiLiang Gu, ''Changes in the Prevalence of Chronic Disability in the United States Black and Nonblack Population above Age 65 from 1982–1999,'' *Proceedings of the National Academy of Sciences* 98, no. 11 (May 22, 2001): 6354–6359. Available from: *http://www.pnas.org/cgi/content/full/98/11/6354.* Accessed 29 June 2005.

[8] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Health, United States, 2003 Special Excerpt: Trend Tables on 65 and Older Population* (Hyattsville, MD: U.S. Department of Health and Human Services, 2003). Available from: *http://www.cdc.gov/nchs/data/misc/hus2003excerpt.pdf.* Accessed 29 June 2005; Federal Interagency Forum on Aging-Related Statistics, *Older Americans 2004: Key Indicators of Well-Being* (Hyattsville, MD: Government Printing Office, 2004). Available from: *http://www.agingstats.gov/chartbook2004/OA_2004.pdf.* Accessed 29 June 2005.

[9] Vicki A. Freedman and Linda G. Martin, ''Understanding Trends in Functional Limitations among Older Americans,'' *American Journal of Public Health* 88, no. 10 (October, 1998): 1457.

[10] Ibid., 1460.

[11] Ibid., 1461.

[12] Christopher Reynolds, ''Boomers' 65 Will Be 'The New 50': Fear Factor Enters Equation as the Prospect of Boomer Retirement Age Pops Up on the Horizon,'' *Forecast,* November 2003. Available from: *http://www.findarticles.com/p/articles/mi_m0GDE/is_11_23/ai_n6102019.* Accessed June 2005.

[13] Charles Leven, *Older Workers: Opportunity at Our Doorstep,* speech delivered at the AARP Board of Directors meeting, Nikkei Senior Work-life Forum, Tokyo, Japan, September 2004. Available from: *http://www.aarp.org/research/work/employment/a2004–09–22-leven-09–04.html.* Accessed 29 June 2005.

[14] General Accounting Office, ''Federal Disability Assistance: Wide Array of Programs Needs to be Examined in Light of 21st Century Challenges,'' *Report to Congressional Committees* (Washington, D.C.: General Accounting Office, June 2005), 4. Available from: *http://www.gao.gov/new.items/d05626.pdf.* Accessed 7 July 2005.

[15] Eugene Steuerle and others, ''Can Americans Work Longer?,'' *Straight Talk on Social Security and Retirement Policy* no. 5 (Washington, D.C.: Urban Institute, August 1999). Available from: *http://www.urban.org/*

U.S. Department of Labor, Bureau of Labor Statistics, projects that job growth will occur in non-physically intensive occupations such as computer operators or service providers.[16]

Congress has also acknowledged the challenges that these economic and social changes may create. Section 201 of the Social Security Amendments of 1983 provided for a gradual increase in the age of eligibility for full retirement benefits from age 65 to age 67. This increase is being phased in over a period of 22 years. The full retirement age will be 66 in 2009 and 67 in 2027. These projections include a 10 year hiatus, during which there will be no increase in the full retirement age.

Shortly after the 1983 Amendments, Congress passed the Age Discrimination Act of 1986 banning mandatory retirement. Congress also enacted the Senior Citizens' Freedom to Work Act of 2000. Section 4 of this Act allows individuals who have attained full retirement age to voluntarily suspend those benefits in order to earn delayed retirement credits.

Clearly, Congress has acknowledged that it is both reasonable and necessary for people to work longer before retiring. At the same time, Congress has not made policy decisions with respect to age and its relationship to the determination of disability. Instead, Congress left the details of factoring age into the determination of disability to us, with the exception of statutory blindness.

Our own adjudicative experience suggests that the current rules should be revised to more accurately reflect the ages at which adjustment to other work becomes increasingly difficult. Since 1978, we have made millions of determinations and decisions at step five of the sequential evaluation process. It appears that there are many jobs that individuals, despite their age, are capable of performing and adjusting to, even though they have not done those jobs previously. It is appropriate for our rules to be adjusted to reflect these changing conditions.

For example, under §§ 404.1567(b) and 416.967(b) of our regulations and other policy instructions, individuals who can do ''light'' work are able to, among other things, stand and walk for most of an eight hour workday, lift and carry up to 20 pounds occasionally and 10 pounds frequently, and use their arms and hands for reaching, pushing, pulling, and manipulation with little or no limitation; they can generally do all of the tasks associated with sedentary work as well. Our rules in Table No. 2, Part 404, Subpart P, Appendix 2, of the Medical-Vocational Guidelines nevertheless require a finding of ''disabled'' for individuals who are age 55 and over who can still do the full range of ''light'' work unless they have transferable skills or recent education that provides for direct entry into skilled work.

While relevant, age has become less of a factor in determining whether individuals can make an adjustment to other work. Therefore, in addition to increasing our age categories by two years, we are proposing to revise the definition in our regulations for the category of ''advanced age'' to include individuals who are age 65 or older.

Why Was This Solution Chosen?

A review of the preambles to the Notice of Proposed Rulemaking (NPRM) and the final regulations that first defined the current age ranges helps us to illuminate why we are now proposing to change them. The preambles articulate that there was no hard data when we drew the lines defining the age categories in 1978; rather, we based the age categories on information about ''progressive deteriorative changes'' that affect the ''vocational capacity to perform jobs'' as individuals get older, our adjudicative experience, and our analysis and interpretation of data about age and employment ''to ascertain a point where it would be realistic to ascribe vocational limitations based on chronological age.'' It should also be noted that some of the employment data we used in 1978 dated to as far back as 1957.

In the NPRM, we stated:

> It is recognized that progressive deteriorative changes, which affect the vocational capacity to perform jobs, occur as individuals get older. *Since no conclusive data which relate varying specific chronological ages to specific vocational limitations for performing jobs are available, it was necessary to analyze and interpret the available age and employment data to ascertain points where it would be realistic to ascribe vocational limitations based on chronological age.* Past experience of the Social Security Administration in determining when age makes a difference in disability determinations has also been considered. * * *

43 FR at 9300 (emphasis added).

We explained when we published the final rules:

> Reference sources and materials dealing with chronological age in terms of vocational relationship deal principally with employment and rehabilitation activities, basing their conclusions mainly on the rate of participation in the labor force, the unemployment rate, duration of unemployment, and the proportion of hires to applicants. * * *
>
> In viewing the overall implications of the data in the sources cited, it must be recognized that there is a direct relationship between age and the likelihood of employment. However, the statutory definition of disability provides specifically that vocational factors must be viewed in terms of their effect on the ability to perform jobs rather than the ability to obtain jobs—in essence, in terms of how the progressive deteriorative changes which occur as individuals get older affect their vocational capacities to perform jobs. *Since no data or sources are available which relate var[y]ing specific chronological ages to specific vocational limitations for performing jobs, it has been necessary to analyze and interpret the available age-employment data to ascertain a point where it would be realistic to ascribe vocational limitations based on chronological age.*
>
> Prior experience of the Social Security Administration in determining when age makes a difference in disability determinations has also been considered. * * *

43 FR 55349, 55353 (November 28, 1978) (emphasis added).

Moreover, in response to public comments about our definitions of the age categories we explained:

> *We acknowledge that there are no conclusive data which relate varying specific chronologi[c]al ages to specific physiologically based vocational limitations for performing jobs;* this was a pioneering effort by SSA due to the unique nature of its disability program. Although ages 45, 50, 55 and 60 may be considered by some as too sharply defined as points in a progression of increasing difficulties, the concept of adversity of the aging process for severely impaired persons approaching advanced or retirement age is not arbitrary. * * *

Id. at 55359 (emphasis added).

As illustrated above, our analysis of current public health studies concludes that significant changes have occurred in the past 25 years which have not been reflected in our regulations. The United States has experienced a fundamental shift from a manufacturing based economy to a service based economy. Today, manufacturing's share of non-farm jobs is half of what it was in 1970.[17] We would be remiss in our stewardship responsibilities if we failed

Template.cfm?NavMenuID=24&template=/TaggedContent/ViewPublication.cfm&PublicationID=6435. Accessed 29 June 2005.

[16] U.S. Department of Labor, Bureau of Labor Statistics, *Working in the 21st Century* (Washington, D.C.: U.S. Department of Labor). Available from: *http://www.bls.gov/opub/working/home.htm.* Accessed 7 July 2005.

[17] U.S. Department of Labor, *Futurework: Trends and Challenges for Work in the 21st Century* (Washington, D.C.: U.S. Department of Labor). Available from: *http://www.dol.gov/asp/programs/history/herman/reports/futurework/report/pdf/ch4.pdf.* Accessed 31 August 2005.

to acknowledge these important developments. Indeed, in the NPRM that included the rules that established the current age categories, we noted:

[I]t is apparently the view of the staff of the House Ways and Means Committee that Congress intended the [Commissioner] to have not only the power, *but also the duty, to issue regulations* [regarding the vocational factors]. The staff, commenting on the broad language of the disability definition enacted by Congress, concluded that:

The original idea was that the broad language of the statutory definition would be amplified by regulations based on operational experience. (Staff of the House Committee on Ways and Means, 93d Cong., 2d Sess., Committee Staff Report on the Disability Insurance Program 6 (July 1974).)

The staff went on to suggest that [SSA]

* * * should explore the possibilities as to whether the definition of disability can be stated more specifically in the law or regulation, and whether more operational presumptions may be incorporated into its administration * * *

43 FR 9284, 9293 (March 7, 1978) (emphasis added).

Therefore, we determine the specific policy for how we consider age in evaluating claims for disability benefits, consistent with our authority to make rules and regulations under sections 205(a) and 1631(d)(1) of the Act.

What Rules Are We Proposing To Revise?

We are proposing revisions that would change our definitions of the categories for the vocational factor of ''age'' in §§ 404.1563 and 416.963 and related rules. The changes would:

- Remove references to age 65 as the end of the ''advanced age'' category and therefore remove references to ''closely approaching retirement age'' as a description of a subcategory of the ''advanced age'' category,
- Increase the ending age for the category ''younger person'' by 2 years, from age 49 to age 51,
- Increase the beginning of the age subcategory for younger persons who are illiterate or unable to communicate in English by 2 years, from age 45 to age 47,
- Increase the beginning and ending ages for the category ''closely approaching advanced age'' by 2 years, from age 50–54 to age 52–56, and
- Increase by 2 years the beginning age for the category ''advanced age'' from age 55 to age 57, and for the subcategory for older persons of ''advanced age'' from age 60 to age 62.

The following chart summarizes the current rules and these proposed changes:

Age category	Current rules	Proposed rules
Younger individual	Age 18–49	Under age 52.
Younger individual, illiterate or unable to communicate in English	Age 45–49	Age 47–51.
Closely approaching advanced age	Age 50–54	Age 52–56.
Advanced age	Age 55–64	Age 57 or older.
Closely approaching retirement age	Age 60–64	Age 62 or older.

We are not proposing to change the rules under part 404 of our regulations for statutorily blind individuals who are age 55 or older; those rules are mandated by the Act and therefore may not be changed without action by Congress. We are also not proposing to change any other rules related to age, such as the age for early retirement (age 62) and the age at which you may qualify for Medicare (age 65) based on retirement; these rules are also required by the Act.

Explanation of Changes

The following is an explanation of the specific changes we are proposing.

We are proposing to revise §§ 404.1563(c), (d), and (e) and 416.963(c), (d), and (e) to raise the ending ages of each of the age categories by 2 years. As a consequence, these changes would raise by 2 years the starting ages for the categories ''person closely approaching advanced age,'' ''person of advanced age,'' and ''closely approaching retirement age.'' The proposed new categories would be as follows:

- *Younger person* (proposed §§ 404.1563(c) and 416.963(c))—an individual who has not attained age 52. The current rules define the age category as age 18 to the 49 (*i.e.*, prior to the attainment of age 50). We propose to remove the reference to age 18 as the starting point of the age category because we sometimes have to make disability determinations using the sequential evaluation process for adults for individuals who are under age 18; for example, we sometimes have to determine whether individuals entitled to child's insurance benefits who are age 16–18 are disabled for purposes of determining whether their mothers or fathers can receive mother's or father's insurance benefits (see § 404.339 of our regulations). Consistent with other changes in these proposed rules, we would also increase the subcategory applicable to ''younger individuals'' who are illiterate and unable to communicate in English by 2 years, from age 45–49 to age 47–51.
- *Closely approaching advanced age* (proposed §§ 404.1563(d) and 416.963(d))—age 52–56.
- *Advanced age* (proposed §§ 404.1563(e) and 416.963(e))—age 57 or older. Consistent with other changes in these proposed rules, we would also increase the age at which we first consider individuals to be ''closely approaching retirement age'' by 2 years, from age 60 to age 62. Also, as we noted earlier in this preamble, we sometimes make disability determinations for individuals who are older than ''full retirement age.'' Therefore, we propose to remove the term ''closely approaching retirement age'' in these sections and throughout our other regulations. Instead we would refer only to ''advanced age, age 62 or older'' or just ''age 62 or older,'' as appropriate to the context of the language of the rule. For clarity, we propose to revise the age criterion for rule 203.10 to ''advanced age, age 57–61.''

In addition, we propose to make conforming changes to the following regulations for the same reasons that we are changing the rules in §§ 404.1563 and 416.963 and for consistency in our rules:

- In §§ 404.1562(b) and 416.962(b), we would change the provision for individuals who are at least 55 years old, have no more than a ''limited'' education (see §§ 404.1564 and 416.964), and have no past relevant work, to increase the age requirement to 57 years.
- In the first sentence of §§ 404.1568(d)(4) and 416.968(d)(4), we would change the provisions that refer to ''advanced age'' from age 55 to age 57. In the fifth and sixth sentences, we would change the provisions that refer to transferability of skills in individuals who are at least 60 years old to increase the age requirement to 62 years.
- In appendix 2 to subpart P of part 404, the Medical-Vocational Guidelines, we propose to make conforming changes in §§ 201.00(d)–(i), 202.00(d), 202.00(f)–(g), and 203.00(b)–(c). We would also change the reference to ''closely approaching retirement age'' in Rule

203.01 in Table No. 3 to ''advanced age, age 62 or older.''

Why are We Proposing To Remove References to Age 65 as the End of the ''Advanced Age'' Category?

Even though our current regulations do not include rules for evaluating disability of individuals who are at least 65 years old, we have other published policy statements that we use to make these decisions. See Social Security Ruling (SSR) 03–3p: ''Policy Interpretation Ruling—Titles II and XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older,'' 68 FR 63833 (2003). The proposal in these regulations to remove the reference to age 64 as the end of the category of ''advanced age'' would only incorporate into our regulations longstanding policy interpretations currently set forth in SSR 03–3p.

Although our regulations currently provide that the highest age category, advanced age, ends with the attainment of age 65, we sometimes have to make disability determinations for people who are older, as described in the situations set forth below.

- Section 216(l) of the Act provides for a gradual increase in the full retirement age from age 65 to age 67. These changes first affected individuals who were born in 1938; that is, who turned age 65 in 2003. By 2027, the incremental increases will be complete, and a full retirement age of 67 will be applicable to all individuals who were born in 1960 or later. (These provisions do not change the age at which an individual can take early retirement at a reduced benefit amount, which remains at age 62.) Under title II, an individual can establish entitlement to benefits based on disability or blindness until the month in which he or she attains full retirement age. Therefore, as a result of the increases in the full retirement age, we are now processing some disability claims under title II of the Act for individuals who are aged 65 or older as described below:
- Under Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, ''qualified'' aliens who were lawfully residing in the United States on August 22, 1996, and who are disabled or blind as defined in section 1614(a) of the Act are eligible for benefits under title XVI, so long as all other eligibility requirements are met. Individuals can establish eligibility based on disability or blindness at any age, even on or after attainment of age 65.

We may also need to make determinations of disability under title XVI for other individuals aged 65 or older to determine:

- State supplements in some States under section 1616 of the Act;
- Whether the work incentive provisions of section 1619(b) of the Act are applicable; or
- Appropriate deeming of income and resources under section 1621(f)(1) of the Act and §§ 416.1160, 416.1161, 416.1166a, and 416.1204 of our regulations.

What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these regulations would also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define ''Disability''?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinalbe impairment(s) as described above that results in . . .
title II	an adult or a child	the inability to do any substantial gainful activity (SGA).
title XVI	an individual age 18 or older	the inability to do any SGA.
title XVI	an individual udner age 18	marked and severe functional limitations.

As required by sections 223(d) and 1614(a)(3) of the Act, if you are an adult, we consider you to be disabled only if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful activity that exists in the national economy. This is true regardless of whether this kind of work exists in the immediate area in which you live, whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

How Do We Decide Whether You Are Disabled?

If you are applying for title II benefits or if you are an adult applying for title XVI benefits, we use a five-step sequential evaluation process, which we describe in our regulations at §§ 404.1520 and 416.920, to decide whether you are disabled under the statutory definition. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and engaging in substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. If not, we will go on to step two.

2. Do you have a ''severe'' impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step three.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find you disabled. If you do not, we will go on to step four of the sequence.

4. Do you have the residual functional capacity (RFC) to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step five.

5. Does your impairment(s) prevent you from doing any other work that exists in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

If you are already receiving benefits, we use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594 and 416.994 of our regulations. This process also includes a step that considers your ability to do other work, considering your RFC and your vocational factors of age, education, and past work experience.

How Do We Use the Medical-Vocational Rules?

As discussed in §§ 404.1569 and 416.969, at step five of the sequential evaluation process we use the medical-vocational rules in appendix 2 of subpart P of part 404. (By reference, § 416.969 of the regulations provides that appendix 2 also applies to adults claiming SSI payments based on disability.) In general, the medical-vocational rules take administrative notice of the existence of numerous unskilled occupations at the exertional levels defined in the regulations, such as ''sedentary,'' ''light,'' and ''medium.'' The rules consider RFC and the vocational factors of age, education, and past work experience in terms of an individual's ability to adjust to other work.

The medical-vocational rules direct a determination or decision whether you are disabled if your RFC and vocational factors (i.e., your age, education, and past work experience) match the criteria in a rule. If your RFC or any one of the vocational factors of age, education, and past work experience do not match the criteria in a medical-vocational rule, the rules provide a framework for making a determination or decision at this step.

Under our policy, we recognize that advancing age makes it increasingly more difficult for older persons to adjust to other work and the medical-vocational rules reflect that policy. However, if you have skilled or semiskilled work experience, you may have gained skills that make it easier for you to adjust to other work—even at an advanced age. If your skills can be used in (transferred to) other skilled or semiskilled work within your RFC, we will ordinarily find that you can adjust to other work and are not disabled regardless of your age or education. Some rules in appendix 2 also direct a conclusion, or provide a framework for deciding whether a person is disabled, when a person has ''skills'' acquired from previous skilled or semiskilled work that are ''transferable'' to other skilled or semiskilled work.

What Are Our Rules on Age as a Vocational Factor?

Our basic rules regarding age as a vocational factor, including our rules defining the age categories we use in appendix 2, are found in §§ 404.1563 and 416.963, ''Your age as a vocational factor.'' Under these regulations, we define three broad age categories:

- In current §§ 404.1563(c) and 416.963(c), we define a *younger person* as an individual who is under age 50. We explain that, if you are in this category, we generally do not consider that your age will seriously affect your ability to adjust to other work. Within this category, however, we include a subcategory for individuals who are age 45–49; we explain that in some circumstances we consider that these persons are more limited in their ability to adjust to other work than persons who have not attained age 45.
- In current §§ 404.1563(d) and 416.963(d), we define a *person closely approaching advanced age* as an individual who is age 50–54. We explain that, if you are in this category, we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.
- In current §§ 404.1563(e) and 416.963(e), we define a *person of advanced age* as an individual who is age 55 or older. We also include a subcategory for individuals who are age 60–64, which we call *closely approaching retirement age*. We explain that we have special rules for individuals who are closely approaching retirement age in our rules regarding transferability of skills for individuals of advanced age, in §§ 404.1568(d)(4) and 416.968(d)(4).

In addition, other disability rules refer to particular ages and age categories. As previously noted, we are proposing to make changes to the following sections:

- Sections 404.1562 and 416.962, ''Medical-vocational profiles showing an inability to make an adjustment to other work,'' include a special provision for individuals who are at least 55 years, have no more than a limited education, and have no past relevant work experience. (See §§ 404.1562(b) and 416.962(b).)
- Sections 404.1568(d)(4) and 416.968(d)(4), provide our rules for determining transferability of skills for individuals who are of ''advanced age,'' including individuals who are ''closely approaching retirement age.''
- The rules and explanatory text of appendix 2 of subpart P of part 404 provide guidance for considering the different age categories defined in §§ 404.1563 and 416.963 when we determine whether you can make an adjustment to other work.

What Is Our Authority To Make Rules and Set Procedures for Determining Whether a Person Is Disabled Under the Statutory Definition?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that:

> The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

Clarity of These Proposed Rules

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these final rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and

respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and have determined that these proposed rules meet the criteria for an economically significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. The Office of the Chief Actuary estimates that these proposed rules, if finalized, will result in reduced program outlays resulting in the following savings (in millions of dollars) over the next 10 years:

Reduction in Federal benefit outlays

Fiscal year	OASDI	SSI	Medicare	Medicaid	Total
2006	136	21	.....	8	165
2007	263	43	.....	26	332
2008	229	53	51	37	369
2009	243	63	102	50	459
2010	303	75	109	59	546
2011	326	94	117	76	612
2012	369	93	135	94	691
2013	414	115	153	107	789
2014	454	130	173	128	884
2015	495	146	195	151	987
Totals:					
2006–10	1,174	255	262	180	1,871
2006–15	3,231	834	1,034	735	5,834

Note: Totals may not equal the sum of the rounded components.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules impose no reporting or recordkeeping requirements requiring OMB clearance.

References

The sources we consulted while developing these proposed rules are cited in the preamble text.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 28, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we are proposing to amend subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Amend § 404.1562 by revising the heading and the first sentence of paragraph (b) to read as follows:

§ 404.1562 Medical-vocational profiles showing an inability to make an adjustment to other work.

* * * * *

(b) *If you are at least 57 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 404.1520(c), 404.1521, and 404.1523), are of advanced age (age 57 or older, *see* § 404.1563), have a limited education or less (*see* § 404.1564), and have no past relevant work experience (*see* § 404.1565), we will find you disabled. * * *

* * * * *

3. Amend § 404.1563 by revising paragraphs (c), (d), and (e) to read as follows:

§ 404.1563 Your age as a vocational factor.

* * * * *

(c) *Younger person.* If you are a younger person (under age 52), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 47–51 are more limited in their ability to adjust to other work than persons who have not attained age 47. See Rule 201.17 in appendix 2.

(d) *Person closely approaching advanced age.* If you are closely approaching advanced age (age 52–56), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

(e) *Person of advanced age.* We consider that at advanced age (age 57 or older) age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age, including persons in this category who are age 62 or older. See § 404.1568(d)(4).

* * * * *

4. Amend § 404.1568 by revising the first, fifth, and sixth sentences of paragraph (d)(4) to read as follows:

§ 404.1568 Skill requirements.

* * * * *

(d) *Skills that can be used in other work (transferability).*

* * * * *

(4) *Transferability of skills for individuals of advanced age.* If you are of advanced age (age 57 or older), and you have a severe impairment(s) that limits you to *sedentary or light work,* we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s). * * * If you are of advanced age but have not attained age 62, and you have a severe impairment(s) that limits you to no more than *light* work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 404.1567(b)). If you are age 62 or older and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. * * *

5. Amend section 201.00 of appendix 2, subpart P, part 404—Medical-Vocational Guidelines—by revising the first sentence of paragraph (d), paragraph (f), the first sentence of paragraph (g), paragraph (h)(1) introductory text, the first sentence of paragraph (h)(2), the first sentence of paragraph (h)(3), and the last sentence of paragraph (i) to read as follows:

APPENDIX 2 TO SUBPART P OF PART 404—MEDICAL-VOCATIONAL GUIDELINES

* * * * *

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).*

* * * * *

(d) The adversity of functional restrictions to sedentary work at advanced age (57 or older) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. * * *

* * * * *

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (57 or older), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 52–56) may be significantly limited in vocational adaptability if they are restricted to sedentary work. * * *

* * * * *

(h)(1) The term *younger individual* is used to denote an individual who has not attained age 52. For individuals who are age 47–51, age is a less advantageous factor for making an adjustment to other work than for those who have not attained age 47. Accordingly, a finding of ''disabled'' is warranted for individuals age 47–51 who: * * *

(2) For individuals who are under age 47, age is a more advantageous factor for making an adjustment to other work. * * *

(3) Nevertheless, a decision of ''disabled'' may be appropriate for some individuals under age 47 (or individuals age 47–51 for whom rule 201.17 does not direct a decision of disabled) who do not have the ability to perform a full range of sedentary work. * * *

* * * * *

(i) * * * Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals who have not attained age 47 even if they are illiterate or unable to communicate in English.

* * * * *

6. Amend section 202.00 of appendix 2, subpart P, part 404—Medical-Vocational Guidelines—by revising paragraph (d), paragraph (f), the last sentence of paragraph (g) to read as follows:

APPENDIX 2 TO SUBPART P OF PART 404—MEDICAL-VOCATIONAL GUIDELINES

* * * * *

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).*

* * * * *

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 52–56) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

* * * * *

(f) For a finding of transferability of skills to light work for individuals of advanced age who are age 62 or older, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) * * * This, in turn, represents substantial vocational scope for younger individuals (individuals who have not attained age 52) even if illiterate or unable to communicate in English.

* * * * *

7. Amend section 203.00 of appendix 2, subpart P, part 404—Medical-Vocational Guidelines—by revising the second sentence of paragraph (b), paragraph (c), and the age criteria for Rules 203.01 and 203.10 in Table No. 3 to read as follows:

APPENDIX 2 TO SUBPART P OF PART 404—MEDICAL-VOCATIONAL GUIDELINES

* * * * *

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).*

* * * * *

(b) * * * Even the adversity of advanced age (57 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. * * *

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (57 or older). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals age 62 or older with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

TABLE NO. 3.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
203.01	Advanced age, age 62 or older.	Marginal or none.	Unskilled or none.	Disabled.
*	*	*	*	*
203.10	Advanced age, age 57–61.	Limited or less	None	Disabled.
*	*	*	*	*

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

8. The authority citation for subpart I continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383(b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

9. Amend § 416.962 by revising the paragraph heading and the first sentence of paragraph (b) to read as follows:

§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.

* * * * *

(b) *If you are at least 57 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 57 or older, *see* § 416.963), have a limited education or less (*see* § 416.964), and have no past relevant work experience (*see* § 416.965), we will find you disabled. * * *

10. Amend § 416.963 by revising paragraphs (c), (d), and (e) to read as follows:

§ 416.963 Your age as a vocational factor.

* * * * *

(c) *Younger person.* If you are a younger person (under age 52), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 47–51 are more limited in their ability to adjust to other work than persons who have not attained age 47. See Rule 201.17 in appendix 2 of subpart P of part 404 of this chapter.

(d) *Person closely approaching advanced age.* If you are closely approaching advanced age (age 52–56), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

(e) *Person of advanced age.* We consider that at advanced age (age 57 or older) age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age, including persons in this category who are age 62 or older. See § 416.968(d)(4).

* * * * *

11. Amend § 416.968 by revising the first, fifth, and sixth sentences of paragraph (d)(4) to read as follows:

§ 416.968 Skill requirements.

* * * * *

(d) *Skills that can be used in other work (transferability).*

* * * * *

(4) *Transferability of skills for individuals of advanced age.* If you are of advanced age (age 57 or older), and you have a severe impairment(s) that limits you to *sedentary or light work,* we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s). * * * If you are of advanced age but have not attained age 62, and you have a severe impairment(s) that limits you to no more than *light* work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 416.967(b)). If you are age 62 or older and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. * * *

[FR Doc. 05–21975 Filed 11–3–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2005–VA–0013; FRL–7993–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Shenandoah National Park Ozone Nonattainment Area To Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The Virginia Department of Environmental Quality (VADEQ) is requesting that the Shenandoah National Park area (the SNP area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the VADEQ submitted a SIP revision consisting of a maintenance plan for the SNP area that provides for continued attainment of the 8-hour ozone NAAQS for the next 10 years. EPA is proposing to make a determination that the SNP area has attained the 8-hour ozone NAAQS based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2002–2004. EPA's proposed approval of the 8-hour ozone redesignation request is based on its

determination that the SNP area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the SNP area for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan revision to the Virginia SIP in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before December 5, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0013 by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/RME*, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: *morris.makeba@epa.gov*.

Mail: R03–OAR–2005–VA–0013, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–VA–0013. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*.

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

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I. What Actions Are EPA Proposing to Take?

On September 21, 2005, VADEQ formally submitted a request to redesignate the SNP area from nonattainment to attainment of the 8-hour NAAQS for ozone. On September 23, 2005, Virginia submitted a maintenance plan for the SNP area as a SIP revision, to ensure continued attainment over the next 10 years. The SNP area is composed of those portions of Page and Madison Counties located within the boundaries of Shenandoah National Park. It is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the SNP area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the SNP area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the area, such approval being one of the CAA requirements for approval of a redesignation request. The maintenance plan is designed to ensure continued attainment in the SNP area for the next 10 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for the SNP area for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The SNP area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 25, 2004

and published on April 30, 2004 (69 FR 23857).

The CAA, Title I, part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1(which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, the SNP area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and is subject to the requirements of subpart 1.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). See 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data from the 3-year period of 2002–2004 indicates that the SNP area has a design value of 0.082 ppm. Therefore, the ambient ozone data for the SNP area indicates no violations of the 8-hour ozone standard. Available preliminary monitoring data for 2005 indicates continued attainment of the 8-hour ozone standard.

B. The Shenandoah National Park Area

The SNP area consists of those portions of Page and Madison Counties located within the boundaries of the Shenandoah National Park. Prior to its designation as an 8-hour ozone nonattainment area, the SNP area was designated as an attainment area for the 1-hour ozone nonattainment NAAQS.

On September 21, 2005, the VADEQ requested that the SNP area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2002–2004, indicating that the 8-hour NAAQS for ozone had been achieved for the SNP area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On September 21, 2005, the VADEQ requested redesignation of the SNP area to attainment for the 8-hour ozone

standard. On September 23, 2005, the VADEQ submitted a maintenance plan for the SNP area as a SIP revision, to assure continued attainment over the next 10 years. EPA has determined that the SNP area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the SNP area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Virginia SIP a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the SNP area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004, 2009 and 2015. These MVEBs are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Year	NO_X	VOC
2004	0.075	0.042
2009	0.057	0.038
2015	0.035	0.029

VI. What Is EPA's Analysis of the Commonwealth's Request?

EPA is proposing to determine that the SNP nonattainment area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the VADEQ's September 21, 2005 and September 23, 2005 submittals satisfy the requirements of section 107(d)(3)(E) of the CAA.

A. The Shenandoah National Park Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the SNP area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the SNP area there is one ozone monitor, located in Madison County/Big Meadows (the Big Meadows Monitor), that measures air quality with respect to ozone. As part of its redesignation request, Virginia submitted ozone monitoring data for the years 2002–2004 (the most recent three years of data available as of the time of the redesignation request). This data has been quality assured and is recorded in AIRS. The fourth high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2.

TABLE 2.—SHENANDOAH NATIONAL PARK NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; BIG MEADOWS MONITOR, AIRS ID 51–113–0003

Year	Annual 4th high reading (ppm)
2002	0.086
2003	0.086
2004	0.075

The average for the 3-year period 2002 through 2004 is 0.082 ppm

The data for 2002–2004 show that the area has attained the standard, and preliminary data for the 2005 ozone season show that the area continues to attain the standard. The data collected at the Big Meadows monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The VADEQ's request for redesignation for the SNP area indicates that the data was quality assured in accordance with 40 CFR part 58. The VADEQ uses AIRS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, VADEQ has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Virginia indicates that the SNP area has attained the 8-hour ozone NAAQS.

B. The Shenandoah National Park Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Virginia has met all SIP requirements for the SNP area applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title 1 of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c)of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control

measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Commonwealth will still be subject to these requirements after the SNP area is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation 66 FR 50399 (October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the Virginia SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Virginia has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

The SNP area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Since the SNP area was in attainment for the 1-hour standard at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004, no Part D submittals under the 1-hour standard were required or made for this area.

Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. The SNP area was classified as a subpart 1 nonattainment area; therefore, no subpart 2 requirements apply to this area.

With respect to the 8-hour standard, EPA proposes to determine that the Virginia SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the area's redesignation request. Because the Commonwealth submitted a complete redesignation request for the SNP area prior to the deadline for any submissions required under the 8-hour standard, we have determined that the part D requirements do not apply to the SNP area for the purposes of redesignation.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect,

because PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' Virginia has demonstrated that the area will be able to maintain the standard without Part D NSR in effect in the SNP area, and therefore, Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. Virginia's SIP-approved PSD program will become effective in the area upon redesignation to attainment in the SNP area. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

3. The Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Virginia SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F. 3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25425 (May 12, 2003) and citations therein. The SNP area was in attainment for the 1-hour standard at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004. Because the area had not previously been designated as nonattainment, no Part D SIP submittals were previously required. Because there are no current SIP submission requirements applicable for the purposes of redesignation of the SNP area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the SNP area, and therefore they need not be approved into the SIP prior to redesignation.

4. The Air Quality Improvement in the Shenandoah National Park Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. Emissions reductions attributable to these rules are shown in Table 3. It should be noted that within the SNP area boundaries, no point sources with emissions greater than 10 tons per year (tpy) of either VOC or NO_X exist, therefore point source emissions equal zero.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 (TPD)

Year	Point	Area*	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	0	0.390	0.182	0.052	0.624
Year 2004	0	0.375	0.162	0.042	0.579
Diff. (02–04)	0	−0.014	−0.020	−0.010	−0.044
Nitrogen Oxides (NO_X)					
Year 2002	0	0.212	0.145	0.089	0.446
Year 2004	0	0.204	0.136	0.075	0.415
Diff. (02–04)	0	−0.008	−0.009	−0.014	−0.031

*Area source category includes emissions from motor vehicle refueling.

Between 2002 and 2004, VOC emissions were reduced by 0.044 tpd, and NO_X emissions were reduced by 0.031 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the SNP area:

Programs Currently in Effect

(a) National Low Emission Vehicle (NLEV);

(b) Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,

(c) Low-sulfur gasoline.

Virginia has demonstrated that the implementation of permanent enforceable emissions controls have reduced local VOC and NO_X emissions. Nearly all of these reductions are attributable to mobile source emission controls such as NLEV and Tier I programs. These mobile programs produced 0.010 tpd of VOC reductions and 0.014 tpd of NO_X reductions.

Additionally, Virginia has indicated in its submittal that the NO_X SIP Call took effect in 2004. While there are no subject sources currently located in the SNP area, Virginia's redesignation request explains that the SNP area indirectly benefits in terms of improved air quality due to this program. The VADEQ estimates that between 2003 and 2004, emissions of NO_X were reduced from facilities located within Virginia and subject to the NO_X SIP Call by approximately 7,400 tons during the ozone season (May 1st through September 30th). The VADEQ believes that these emission reductions, which are taking place outside the SNP area, are significant in improving the SNP area's air quality.

Other regulations, such as the non-road diesel, 69 FR 39858 (June 29, 2004), the heavy duty engine and vehicle standards, 66 FR 5002 (January 18, 2001) and the new Tier 2 tailpipe standards for automobiles, 65 FR 6698 (January 10, 2000), are also expected to greatly reduce emissions throughout the country and thereby reduce the transported emissions impacting the SNP area monitor. The Tier 2 standards came into effect in 2004, and by 2030, EPA expects that the new Tier 2 standards will reduce NO_X emissions by about 74 percent. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving

attainment of the 8-hour ozone standard.

5. The Shenandoah National Park Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the SNP area to attainment status, Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the area for at least 10 years after redesignation.

What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) A maintenance demonstration;

(c) A monitoring network;

(d) Verification of continued attainment; and

(e) A contingency plan.

Analysis of the Shenandoah National Park Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. The VADEQ determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the 3-year block of 2002–2004 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date.

The VADEQ prepared comprehensive VOC and NO_X emissions inventories for the SNP area, including area, mobile on-road, and mobile non-road sources for a base year of 2002. The SNP area does not have any point sources with actual emissions greater than 10 tpy, therefore they were not included in the emissions inventory (see the point source discussion). All inventories are based on actual emissions for a ''typical summer day'' and consist of a list of sources and their associated emissions. An attainment year of 2004 was used for the SNP area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date.

To develop the NO_X and VOC base year emissions inventories, VADEQ used the following approaches and sources of data:

(i) *Point source emissions*—The SNP area is rural and considered a Class I area. No industrial facilities exist within the Shenandoah National Park boundaries. Also, there are no other point sources, such as those used for heating purposes, with actual emissions of more than 10 tpy of either NO_X or VOC. A complete point source emissions inventory may be found in Air Emissions Inventory for Shenandoah National Park, which is in Appendix B of both the maintenance plan and the redesignation request that are in the docket for this proposed action. The registration database used and maintained by VADEQ also does not contain any sources emitting more than 10 tpy of ozone precursors. Because the SNP area lies solely within the boundaries of Shenandoah National Park, EPA believes VADEQ's assumption that there will be no point source growth in this inventory area is reasonable.

(ii) *Area source emissions*—The area source emissions were developed using the 2002 periodic year stationary area source emissions inventories along with growth factors. Before attempting to calculate the growth factors, VADEQ determined the appropriate annual growth rate representative of each industry or indicator. ''Growth Rate'' refers to the annual percentage of growth that occurs in a category per year. The area source growth rate estimates also involve the use of current local source data, including area populations and employment data by source type.

The 2002 emissions data for forest fires was developed to estimate wildfire emissions. However, 2002 was not considered a typical year for wildfires. The VADEQ stated that an analysis of 10 years of fire data was used to develop a ''typical'' year's estimates for wildfire emissions in the SNP area. This ''typical'' year is approximately 20 percent less than actual emissions estimated for 2002. Based on this information, the SNP area wildfire data were estimated by decreasing the emissions from 2002 downward 20 percent. It should be noted that the Shenandoah National Park has a fire management plan that looks forward 5 years and recommends prescribed burning for the health and well being of the wilderness. These 5-year plans are conservative in nature; generally weather and resource constraints do not allow the full implementation of all planned fires in any year. The 5-year plan tries to manage prescribed burning throughout the Shenandoah National Park; therefore assuming a growth factor larger than 1.0000 would overestimate emissions from this category.

(iii) *On-road mobile source emissions*—The process of estimating on-road mobile source emissions consists of two components: Vehicular-related activity (i.e., VMT) and an average rate of pollutant produced as a result of a particular level of activity. The SNP area traffic data was obtained from the report entitled, ''NPS Traffic Monitoring Program, Coverage Count, and Data Reporting Project for Shenandoah National Park,'' dated March 12, 2004, which is in Appendix B of both the maintenance plan and the redesignation request that are in the docket for this proposed action. This report included VMT for 5 roadway segments within Shenandoah National Park. Since the SNP area only includes the portion of Shenandoah National Park within the boundaries of Page and Madison Counties, the VMT was adjusted downward to exclude that occurring outside the SNP area boundary. Based on information found in the previously cited document, vehicle travel through the Park appears to have been declining in recent years. A pollutant emission rate, associated with these particular levels of activity, was estimated using MOBILE6.2 emissions factors. The VADEQ has provided detailed data summaries to document the calculations of mobile on-road VOC and NO_X emissions for 2002, as well as for the projection years of 2004, 2009, and 2015 (shown in tables 4 and 5 below). The mobile on-road source emissions projections include the National Low Emissions Vehicle Program (NLEV), the 2004 Tier 2 and Low Sulfur Gasoline Rule, the 2004 and 2007 Heavy-Duty Diesel Vehicle Rules, and the 2006 Low Sulfur Diesel Rule.

(iv) *Mobile non-road emissions*—The mobile non-road emissions were calculated using the NONROAD2004

model, which incorporates the projected emission reductions resulting from EPA's Clean Air Non-road Diesel Rule. The mobile non-road emissions calculated by the model were scaled down based on equipment population data to account for a growth factor of 1.0 in the non-road category. The assumption of no growth is supported by the very nature of the Shenandoah National Park, which strives to minimize the human footprint on the wilderness area, as well as the visitation data that shows a declining trend in Shenandoah National Park visitors since 1993.

The 2004 attainment year VOC and NO_X emissions for the SNP area are summarized along with the 2009 and 2015 projected emissions for this area in tables 4 and 5 below, which covers the demonstration of maintenance for this area. EPA has concluded that Virginia has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On September 23, 2005, the VADEQ submitted a SIP revision to supplement its September 21, 2005 redesignation request. The submittal by VADEQ consists of the maintenance plan as required by section 175A of the CAA. This plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the SNP area through the year 2015. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–32 (May 12, 2003).

Tables 4 and 5 specify the VOC and NO_X emissions for the SNP area for 2004, 2009, and 2015. The VADEQ chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2015 (TPD)

Source category	2004 VOC emissions	2009 VOC emissions	2015 VOC emissions
Mobile [1]	0.042	0.028	0.019
Nonroad	0.162	0.109	0.081
Area [2]	0.375	0.378	0.383
Point	0	0	0
Total	0.579	0.514	0.483

[1] Includes transportation conformity provisions.
[2] Includes vehicle refueling emissions.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2015 (TPD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2015 NO_X emissions
Mobile[1]	0.075	0.047	0.025
Nonroad	0.136	0.110	0.077
Area	0.204	0.204	0.204
Point	0	0	0
Total	0.415	0.361	0.306

[1] Includes transportation conformity provisions.

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006); 66 FR 2001 (January 18, 2001); and
- Non-road emissions standards (2008) and off-road diesel fuel (2007/2010); 69 FR 39858 (June 29, 2004).

In addition to the permanent and enforceable measures, the Clean Air Interstate Transport Rule (CAIR), promulgated May 12, 2005, (70 FR 25161) should have positive impacts on the Commonwealth's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015) should reduce long range transport of ozone precursors, which will have a beneficial effect on the air quality in the SNP area.

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that VADEQ has successfully demonstrated that the 8-hour ozone standard should be maintained in the SNP area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the SNP area. Virginia and the National Park Service, which operates the Big Meadows monitoring station, will continue to operate its current air quality monitor in accordance with 40 CFR part 58. Should measured mobile source parameters change significantly over time, the Commonwealth will perform a saturation monitoring study to determine the need for, and location of, additional permanent monitors.

(d) Verification of Continued Attainment—The Commonwealth of Virginia has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Additionally, federal programs such as the NLEV program, Tier2/Low Sulfur Gasoline Rule, 2007 On-Road Diesel Engine Rule, and Federal Non-road Engine/Equipment Rules will continue to be implemented on a national level. These programs help provide the reductions necessary for the SNP area to maintain attainment.

In addition to maintaining the key elements of its regulatory program, the Commonwealth will acquire ambient and source emissions data to track attainment and maintenance. The VADEQ will track the progress of the maintenance demonstration by

periodically updating the emissions inventory. This tracking will consist of annual and periodic evaluations. The annual evaluation will consist of checks on key emissions trend indicators such as the annual emissions update of stationary sources, the Highway Performance Monitoring System (HPMS) VMT data reported to the Federal Highway Administration, and other growth indicators. These indicators will be compared to the growth assumptions used in the plan to determine if the predicted versus the observed growth remains relatively constant. The Commonwealth will also develop and submit comprehensive tracking inventories to EPA every three years during the maintenance plan period. For the purpose of performing this tracking function for point sources, the Commonwealth will retain the annual emission statement requirements for the maintenance area (9 VAC 5–20–160).

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measures that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the SNP area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2015. The Commonwealth's maintenance plan lays out two situations where the need to adopt and implement a contingency measure to further reduce emissions would be triggered. Those situations are as follows:

(i) *An actual increase of the VOC or NO_X emissions above the 2004 attainment levels is identified or predicted through the development of the comprehensive periodic tracking inventories*—The maintenance plan states that the VADEQ will monitor the observed growth rates for VMT, population, and point source VOC and NO_X emissions on a yearly basis which will serve as an early warning indicator of the potential for a violation. The plan also states that comprehensive tracking inventories will also be developed every 3 years using current EPA-approved methods to estimate emissions, concentrating on areas identified in the less rigorous yearly evaluations as being potential problems. If the 2004 attainment level emissions for VOC or NO_X is exceeded or is predicted to be exceeded, the following measure will be implemented:

- Preparation of a complete and thorough VOC and NO_X emission inventory for the current year.

(ii) *In the event that a violation of the 8-hour ozone standard occurs at the Madison County/Big Meadows monitor*—The maintenance plan states that in the event that a violation of the ozone standard occurs at the Big Meadows monitor, the Commonwealth of Virginia, in consultation with EPA Region III and the Shenandoah National Park, will implement one of the following measures:

- The implementation of Stage I vapor recovery on the gasoline stations located in the SNP area;
- The Shenandoah National Park would expand their implementation of a series of voluntary, episodic control measures through an Air Quality Action Day Program (AQADP). The program will be based upon ozone forecasts created for the Shenandoah National Park by VADEQ meteorological staff. The AQADP would be operated by the Shenandoah National Park in partnership with the VADEQ. The VADEQ would issue an Air Quality Action Day forecast when 8-hour ozone levels are predicted to exceed 0.08 ppm. The VADEQ would notify the Shenandoah National Park representatives via email no later than 3 p.m. of the afternoon before the exceedance is forecast. This information would also be provided to major media and other interested parties. The information would be included on the VADEQ Web site, *http://www.deq.virginia.gov/airquality*. On days when 8-hour ozone levels are forecast to exceed 0.08 ppm (code orange or code red days), the Shenandoah National Park would implement the following actions or similar actions deemed appropriate by the park Superintendent:

(1) Encourage employees to decrease vehicle use by car pooling and reducing the number of non-essential trips; (2) Postpone or decrease the use of mowers, weed eaters, chainsaws, electroshockers, and other similar gasoline engine equipment until the ozone level drops; (3) Postpone painting projects that use oil based paints or solvents; and (4) Encourage refueling of vehicles in the early morning or late evening hours.

- The Commonwealth would implement of one or more of the following Virginia's area source VOC regulations throughout the entire SNP area: Emission Standards for Portable Fuel Container Spillage (9 VAC 5 Chapter 40, Article 42); Emission Standards for Mobile Equipment Repair and Refinishing Operations (9 VAC 5 Chapter 40, Article 48); Emission Standards for Architectural and Industrial Maintenance Coatings (9 VAC 5 Chapter 40, Article 49); Solvent Cleaning (9 VAC 5 Chapter 40 Article 47); and Emission Standards for Consumer Products (9 VAC 5 Chapter 40, Article 50).

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning the option of implementing either Stage I vapor recovery requirements or one or more area source VOC regulations.

- Notification received from EPA that a contingency measure must be implemented , or three months after a recorded violation;
- Applicable regulation to be adopted 6 months after this date;
- Applicable regulation to be implemented 6 months after adoption; [1]
- Compliance with regulation to be achieved within 12 months of adoption.

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning the option of implementing an AQADP.

- Implementation of meteorological forecasts for the SNP area commencing 60 days after a recorded violation.
- Implementation of the AQADP, based on meteorological forecasts created by VADEQ, no later than 60 days after VADEQ notifies the SNP Superintendent that the meteorological forecasts are available.

The maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. EPA believes that the maintenance plan SIP revision

[1] In the event that implementation of Stage I vapor recovery is selected as a contingency measure, Virginia would notify all sources located in the SNP area within 6 months after notification received from EPA that the contingency measure must be implemented, or within three months after a recorded violation. The newly subject Stage I vapor recovery sources would be required to comply with Stage I vapor recovery requirements no later than 12 months from the date VADEQ adopts the regulation.

submitted by Virginia for the SNP area meets the requirements of section 175A of the Act.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Shenandoah National Park Area Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets (MVEBs)?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*i.e.* RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan the MVEBs are termed ''on-road mobile source emissions budgets.'' Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the national ambient air quality standards. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a state implementation plan.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects ''conform'' to the state implementation plan as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision''. This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for the SNP area are listed in Table 1 of this document for the 2004, 2009, and 2015 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2015 safety margin: The SNP area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the SNP area. The total emissions from area, mobile on-road, and mobile non-road sources in 2004 equaled 0.579 tpd of VOC and 0.415 tpd of NO_X. The VADEQ projected emissions out to the year 2015 and projected a total of 0.493 tpd of VOC and 0.316 tpd of NO_X from all sources in the SNP area. The safety margin for the SNP area for 2015 would be the difference between these amounts, or 0.086 tpd of VOC and 0.099 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2015 years.

TABLE 6.—2009 AND 2015 SAFETY MARGINS FOR THE SHENANDOAH NATIONAL PARK AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	0.0579	0.415
2009 Interim	0.0525	0.371
2009 Safety Margin	0.054	0.044
2004 Attainment	0.579	0.415
2015 Final	0.493	0.316
2015 Safety Margin	0.086	0.099

The VADEQ allocated 0.010 tpd of the safety margin to both the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2015 MVEBs the VADEQ allocated 0.010 tpd NO_X and 0.010 tpd VOC from the 2015 safety margins to arrive at the 2015 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2015 MVEBS for the SNP area.

TABLE 7.—2009 AND 2015 FINAL MVEBS FOR THE SHENANDOAH NATIONAL PARK AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 projected on-road mobile source projected emissions	0.028	0.047
2009 Safety Margin Allocated to MVEBs	0.010	0.010
2009 MVEBs	0.038	0.057
2015 projected on-road mobile source projected emissions	0.019	0.025
2015 Safety Margin Allocated to MVEBs	0.010	0.010
2015 MVEBs	0.029	0.035

C. Why Are the MVEBs Approvable?

The 2004, 2009 and 2015 MVEBs for the SNP area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Shenandoah National Park Area Maintenance Plan?

The MVEBs for the SNP area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the SNP MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the SNP area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. General Information Pertaining to Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IX. Proposed Actions

EPA is proposing to determine that the SNP area has attained the 8-hour ozone NAAQS. The EPA is also proposing to approve the Commonwealth of Virginia's September 21, 2005 request for the SNP area to be designated to attainment of the 8-hour NAAQS for ozone because the requirements for approval have been satisfied. EPA has evaluated Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the SNP area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for this area, submitted on September 23, 2005, as a revision to the Virginia SIP. EPA is proposing to approve the maintenance plan for the area because it meets the requirements of section 175A as described more fully above. EPA is also proposing to approve the MVEBs submitted by Virginia for the area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

X. Statutory and Executive Order Reviews

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

also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule proposing to approve the redesignation of the SNP area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: October 28, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–22031 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[OAR–2003–0228, FRL–7993–2]

RIN 2060–AN11

Protection of Stratospheric Ozone: Listing of Ozone Depleting Substitutes in Foam Blowing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today the Environmental Protection Agency (EPA) is proposing to determine that HCFC–22 and HCFC–142b are unacceptable for use in the foam sector under the Significant New Alternatives Policy (SNAP) Program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone depleting substances and approves use of alternatives which do not present a greater risk to public health and the environment than the substance they replace or than other available substitutes. Specifically, EPA is taking two actions. First, in response to a court decision upholding a challenge to EPA's July 2002 final rule finding HCFC–22 and HCFC–142b acceptable subject to Narrowed Use Limits in three foam end uses, we are proposing to find HCFC–22 and HCFC–142b unacceptable as substitutes for HCFC–141b in the foam end uses of commercial refrigeration, sandwich panels, slabstock and ''other'' foams. Second, in the July 2002 final rule, EPA withdrew a proposed action to find HCFC–22 and HCFC–142b unacceptable as substitutes for CFCs in all foam end uses. We are now issuing a new proposal to find HCFC–22 and HCFC–142b unacceptable as substitutes for CFCs in all foam end uses.

DATES: Comments on this proposed rule must be received on or before December 5, 2005, unless a public hearing is requested. If requested by November 21, 2005 a hearing will be held on December 5, 2005 and the comment period will be extended until January 3, 2006 by a document published in the **Federal Register**. Inquires regarding a public hearing should be directed to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0507 by one of the following methods:

- Federal eRulemaking portal www.regulations.gov. Follow the on-line instructions for submitting comments;

• Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments;

• Fax comments to (202) 566–1741; or

• Mail/hand delivery: Submit comments to Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202) 566–1742.

Instructions: Direct your comments to Docket ID No. OAR–2004–0507. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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 on-line 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 Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Suzie Kocchi, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9387; fax number: (202) 343–2363; e-mail address: *kocchi.suzanne@epa.gov.* The published versions of notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *http://www.epa.gov/ozone/snap/regs.*

SUPPLEMENTARY INFORMATION:

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I. Regulated Entities

Today's rule regulates the use of HCFC–22 and HCFC–142b as foam blowing agents used in the manufacture of rigid polyurethane/polyisocyanurate and extruded polystyrene foam products. Businesses that currently might be using HCFC–22 and HCFC–142bb, or might want to use it in the future, include:

—Businesses that manufacture polyurethane/polyisocyanurate foam systems

—Businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc.

—Businesses that use manufacture extruded polystyrene foam insulation for buildings, roofs, pipes, etc.

Table 1 lists potentially regulated entities:

TABLE 1.—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

Category	NAICS code or subsector	Description of regulated entities
Industry	326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing.
Industry	326140	Polystyrene Foam Product Manufacturing.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION.**

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone depleting substances (ODS). EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform,

methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. When the Agency grants a petition, EPA must publish the revised lists within an additional six months.

• *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify EPA not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide EPA with the producer's health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published a rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning, foam manufacturing, solvents cleaning, fire suppression and explosion protection, sterilants; aerosols, adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone depleting compounds.

EPA defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance (40 CFR 82.172). Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative (40 CFR 82.174(a)). This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

C. Listing Decisions

Under section 612, EPA has considerable discretion in the risk management decisions it can make under the SNAP program. In the 1994 SNAP rule, the Agency identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable (40 CFR 82.180(b)). Fully acceptable substitutes, i.e., those with no restrictions, can be used for all applications within the relevant sector end-use.

After reviewing a substitute, EPA may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as ''acceptable subject to use conditions.''

Even though EPA can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must first ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation must include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. The use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit is unacceptable and violates Section 612 of the CAA and the SNAP regulations. (40 CFR 82.174).

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings (59 FR 13044). Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

As described in the original March 18, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes. In this proposed rule, EPA is revising its determination regarding the acceptability of HCFC–22 and HCFC–142b as substitutes for HCFC–141b and CFCs in the foam blowing sector. The section below presents a detailed discussion of the proposal being made today.

III. Listing Decisions on HCFC–22 and HCFC–142b in the Foam Sector

A. Background

A major goal of the SNAP program is to facilitate the transition away from ODS to alternatives that pose less risk to human health and the environment. In 1994, EPA listed several HCFCs as acceptable replacements for CFCs [1] because the Agency believed that HCFCs provided a temporary bridge to alternatives that do not deplete stratospheric ozone (i.e., ''ozone-friendly'' alternatives). At that time, EPA believed that HCFCs were necessary transitional alternatives to CFC blowing agents in thermal insulating foam (59 FR 13083). As a result, HCFC–22 and HCFC–142b have become common foam blowing agents in place of CFCs. Pursuant to the CAA and the *Montreal Protocol on Substances that Deplete the Ozone Layer*, HCFC–22 and HCFC–142b are scheduled to be phased out of production and import in the United States on January 1, 2010.[2] Since the time EPA initially listed HCFC–22 and

[1] Historically, CFC–11, CFC–12, CFC–113 and CFC–114 have all been used as blowing agents in the foam industry, with CFC–11 in polyurethane applications and CFC–12 in extruded polystyrene boardstock applications being the two most popular CFC blowing agents (March 18, 1994, 59 FR 13082).

[2] The phaseout schedule was established on December 10, 1993 (58 FR 65018) as authorized under section 606 of the Clean Air Act.

HCFC–142b as acceptable in certain foam blowing uses, the Agency has listed several other non-ODS alternative blowing agents, including hydrofluorocarbons (HFCs), hydrocarbons, carbon dioxide, and other compounds, as acceptable substitutes in foam blowing.[3]

In a final rule published on July 22, 2002, EPA did the following: (1) Found HCFC–22 and HCFC–142b acceptable substitutes for HCFC–141b with Narrowed Use Limits in the foam end uses of commercial refrigeration, sandwich panels, and rigid polyurethane slabstock and ''other'' foams end uses; (2) withdrew a proposed decision to list HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs for all foam end uses; (3) listed HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in the foam end uses of rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance foam and rigid polyurethane spray foam; and (4) listed HCFC–124 as an unacceptable substitute in all foam end uses. This proposal again takes action with respect to two of the actions addressed in the July 2002 rule. First, in light of a recent court decision (*Honeywell Int'l* v. *EPA,* 374 F.3d 1363 (D.C. Cir 2004), *modified on rehearing* 393 F.3d 1315 (D.C. Cir. 2005)), EPA is proposing to list HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in commercial refrigeration, sandwich panels, and slabstock and ''other'' foam, but is proposing to grandfather existing users until January 1, 2010. Second, EPA is once again proposing to list HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs in all foam end uses, but is proposing to grandfather existing users until January 1, 2010.

HCFC–22 and HCFC–142b Unacceptable as Substitutes for HCFC–141b

After the publication of the July 22, 2002 final rule, Honeywell International filed suit in the United States Court of Appeals for the District of Columbia Circuit (the Court), challenging the Narrowed Use Limits that the Agency established for HCFC–22 and HCFC–142b. Among other things, Honeywell alleged that EPA improperly considered costs in determining to establish Narrowed Use Limits instead of finding HCFC–22 and HCFC–142b unacceptable for certain end uses. EPA argued that the decision was based solely on technical feasibility and, though not precluded from considering costs, it had not done so as part of the decision. The Court upheld Honeywell's challenge, explaining that various preamble statements indicated that EPA had considered costs, but that EPA had not explained the basis for doing so (*Honeywell Int'l* v. *EPA*, 374 F.3d 1363 (DC Cir 2004), *modified on rehearing* 393 F.3d 1315 (D.C. Cir. 2005)). In light of the Court's decision, EPA is required to reassess its action with respect to the acceptability of HCFC–22 and HCFC–142b as substitutes for HCFC–141b in commercial refrigeration, sandwich panels, and slabstock and ''other'' foam. After considering new information on alternatives, the Agency is proposing to find HCFC–22 and HCFC–142b unacceptable as substitutes for HCFC–141b in commercial refrigeration, sandwich panels, and slabstock and ''other'' foam applications based on the technical viability of alternatives, as detailed in a section below. Therefore, EPA does not need to address whether other alternatives are so costly that they justify some limited acceptability determination for these substitutes.

The majority of the applications in the end uses covered by the Narrowed Use Limits are applications referred to as ''pour foam''. Pour foam represents a diverse sector of the polyurethane industry comprised of a wide range of applications and fragmented HCFC use including: commercial refrigeration (such as walk-in coolers), doors (such as entry doors or garage doors), refrigerated transport, vending machines, residential architectural panels, tank and pipe insulation, marine flotation foams, floral foam and taxidermy foam.

The pour foam sector operates differently than many other end uses regulated under SNAP. Rather than the end user directly buying and using an alternative, the alternative is first processed by a formulator, known as a ''systems house''. The formulators purchase raw materials, including the blowing agent (e.g. HCFC–22 or HCFC–142b), isocyanates, surfactants, and fire retardants from suppliers, and then blend the materials into a foam system. Formulators tend to sell pour foam systems in drums or other containers where the isocyanate is kept separate from the blowing agent and other ingredients. Because the re-formulating and testing is done by the formulators, they are relied upon for much of the technical expertise and support provided to the ultimate end user, in this case, pour foam manufacturers. The pour foam manufacturers purchase these systems from the formulators in order to produce the actual foam product (*e.g.*, walk-in coolers). Thus, in the pour foam sector, formulators are responsible for implementing alternatives to the ozone-depleting blowing agents and providing the pour foam manufacturers with systems that produce foam meeting technical, safety, and performance requirements. Both the formulators and pour foam manufacturers are subject to SNAP regulations because both use the blowing agent—formulators blend the blowing agent into a foam formulation, and manufacturers produce the foam with aid of the blowing agent.

There are approximately 15–20 systems houses in the U.S. that formulate pour foam systems and include both large and small businesses. EPA concluded in the 2002 final rule, that at that time, some pour foam applications, particularly those with thermal performance requirements, did not have technically viable ozone-friendly alternatives available. As the Agency explained, ''EPA believes that ozone-friendly alternatives to HCFC–141b have not been fully developed and implemented across the spectrum of applications within these end-uses'' (67 FR 47707). Therefore, EPA established the Narrowed Use Limits to provide the formulators of pour foam systems who found alternatives were not technically viable in certain applications the flexibility to switch to the less harmful ozone depleting chemicals of HCFC–22 and HCFC–142b.

EPA did not intend for the 2002 Narrowed Use Limits to remain in place permanently. As the Agency stated in the final rule, ''EPA is continuing to review the commercial refrigeration, sandwich panels, and slabstock and other foams end-uses to determine the progress of non-ozone depleting alternatives. As non-ozone depleting alternatives become more widely available, the Agency will reevaluate the acceptability of HCFCs in these end-uses. Therefore, foam manufacturers within these applications that are using HCFCs should begin using non-ozone depleting alternatives as soon as they are available in anticipation of future EPA action restricting the use of HCFCs'' (67 FR 47704). Based on the information provided to EPA since the publication of the final rule in July 2002, EPA believes today that, alternatives are now widely available, technically viable, and in use in the end uses covered by the Narrowed Use Limits determination that was vacated

[3] These listings are published in the following **Federal Register** notices: September 3, 1996 (61 FR 47012), March 10, 1997 (62 FR 10700), June 3, 1997 (62 FR 30275), February 24, 1998 (63 FR 9151), June 8, 1998 (634 FR 30410), December 6, 1999 (64 FR 68039), April 11, 2000 (65 FR 19327), June 19, 2000 (65 FR 37900), December 18, 2000 (65 FR 78977), August 21, 2003 (68 FR 50533) and October 1, 2004 (69 FR 58903).

by the Court (Docket # OAR–2004–0507, Documents 0004 through 0011).

HCFC–22 and HCFC–142b Unacceptable as Substitutes for CFCs

The 2002 final rule withdrew a proposal published in 2000 to change the listing of HCFC–22 and HCFC–142b as substitutes for CFCs from acceptable to unacceptable. EPA had proposed to list these substitutes as unacceptable for new users effective 60 days after publication of the final rule in the **Federal Register**, but to allow existing users of HCFC–22 and HCFC–142b to continue use of those substitutes (i.e., be ''grandfathered'') until January 1, 2005. The Agency explained that it was appropriate to grandfather existing use of HCFC–22 and HCFC–142b, because EPA believed ''that it could take foam manufacturers up to four years to transition to alternatives'' (65 FR 42659).[4] Commenters on the proposal largely agreed with EPA's assessment of the amount of time it takes to transition to alternatives in many foam applications. Additionally, the recent phaseout of HCFC–141b and the implementation of alternatives in those foam applications in which HCFC–141b was previously used has further demonstrated the accuracy of that four-year transition timeline. Grandfathering allows those who had made a good faith transition to a SNAP-approved alternative sufficient time to transition to a different alternative while prohibiting new investment in an alternative that no longer meets the test for being SNAP-approved (i.e., availability of other alternatives that provide less risk to human health and the environment).

At the time of the proposal, the information available to EPA suggested that non-ozone depleting chemicals were technically viable as replacements and existing users of HCFC–22 and HCFC–142b could switch to these alternatives within four years. After the proposal, EPA gathered additional information regarding the technical viability of alternatives and presented that information in a Notice of Data Availability (NODA) (May 23, 2001, 66 FR 28408). Based on all of the information before the Agency, including comments on the proposed rule and the information made available through the NODA, EPA withdrew the proposal to list HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs in the July 22, 2002 final rule. In particular, the extruded polystyrene industry, the largest user of HCFC–142b, and the polyurethane manufacturers using HCFC–22, cited technical constraints in implementing non-ODP alternatives. The Agency agreed and withdrew that portion of the proposal because EPA believed, at that time, there were technical constraints ''in switching to ozone-friendly alternatives for these users within the next several years'' (67 FR 47707).

Since the July 2002 final rule, the phaseout of HCFC–141b in 2003, and the action of the Court in 2004, EPA has gathered new information on the technical viability of non-ODP alternatives to HCFC–22 and HCFC–142b in the foam industry (Docket # OAR–2004–0507, Documents 0004 through 0011). Today, EPA is proposing two actions regarding the acceptability of HCFC–22 and HCFC–142b in the foam sector. First, EPA is proposing to find HCFC–22 and HCFC–142b unacceptable as substitutes for HCFC–141b in the foam end uses of commercial refrigeration, sandwich panels, and slabstock and ''other'' foam, but is proposing to grandfather existing users until January 1, 2010. Second, EPA is proposing to find HCFC–22 and HCFC–142b unacceptable as substitutes for CFCs in all foam end uses, but is proposing to grandfather existing users until January 1, 2010. EPA's decisions are based on the technical viability of alternatives.

B. Proposal

(1) HCFC–22, HCFC–142b and Blends Thereof Are Proposed as Unacceptable as Substitutes for HCFC–141b in the Foam End-Uses of Commercial Refrigeration, Sandwich Panels, and Slabstock and ''Other'' Foam

This proposal would prohibit users of HCFC–141b to switch to HCFC–22 and HCFC–142b in commercial refrigeration, sandwich panels, and slabstock and ''other'' foams end uses. Based on the information EPA has received since 2002, the Agency believes that ozone-friendly alternatives are now technically viable and available in these three end uses. The information found in docket OAR–2004–0507 demonstrates that several SNAP-approved non-ODP alternatives, including hydrocarbons, HFC–245fa, HFC–134a, methyl formate and water, are widely available, technically viable in the foam end uses addressed by this proposal, and are being sold in the market today across the commercial refrigeration, sandwich panels, and slabstock and ''other'' foam end uses (Docket # OAR–2004–0507, Documents 0004 through 0011).

This listing would be effective 60 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users of HCFC–22 and HCFC–142b as of the date of publication of this proposal in the **Federal Register** be grandfathered (i.e., allowed to continue their use) until January 1, 2010.[5] EPA is proposing to grandfather existing users from the unacceptability determination based on our analysis under the four-part test established in *Sierra Club* v. *EPA.* The four parts of this test are described earlier in the preamble and are discussed on page 13057 of EPA's original SNAP rule (published on March 18, 1994). The Agency believes it is appropriate to grandfather these users for the same reasons provided below with respect to users of HCFC–22 and HCFC–142b who switched to these substitutes as an alternative for CFCs.

(2) HCFC–22, HCFC–142b and Blends Thereof Are Proposed as Unacceptable as Substitutes for CFCs in All Foam End Uses

Due to the technical viability and availability of ozone-friendly alternatives, this proposal, if finalized, would prohibit any new use of HCFC–22 and HCFC–142b as substitutes for CFCs in all foam end uses. This listing would be effective 60 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users of HCFC–22 and HCFC–142b as of the date of publication of this proposal in the **Federal Register** be grandfathered (i.e., allowed to continue their use) until January 1, 2010 based on our analysis under the four-part test established in *Sierra Club* v. *EPA.*

EPA listed HCFCs as acceptable substitutes for CFCs in 1994 and although HCFCs are transitional substances, clearly users relied on the Agency's prior acceptability listing of HCFC–22 and HCFC–142b when they transitioned from CFCs in foam applications.[6] Thus, for the existing

[4] The decision to grandfather is based on the criteria established in *Sierra Club* v. *EPA* (719 F.2D 436 (DC CIR. 1983)). The criteria EPA examines to judge the appropriateness of grandfathering includes: (1) Is the new rule an abrupt departure from Agency practice, (2) what is the extent the interested parties relied on the previous rule, (3) what is the burden of the new rule on the interested parties and (4) what is the statutory interest in making the new rule effective immediately, as opposed to grandfathering interested parties (59 FR 13057).

[5] In this context, existing use is defined as current use of HCFC–22 and/or HCFC-142b to manufacture actual foam products that are sold into commercial markets.

[6] Similarly, even through the 2002 final rule was eventually vacated by the Court in 2004, at that time users of HCFC–141b that transitioned to HCFC–22 and HCFC–142b in commercial refrigeration, sandwich panels, and slabstock and other foam relied on EPA's acceptability determination as it appeared in the 2002 final rule.

users of HCFC–22 and HCFC–142b that invested in good faith in these chemicals as replacements for CFC blowing agents, EPA believes it is appropriate to provide time for these users to transition to ozone-friendly alternatives.

As explained earlier, EPA believes that in some foam applications, particularly thermal insulation applications, it can take up to four years to complete a blowing agent transition. Requiring all existing users of HCFC–22 and HCFC–142b to comply immediately with the proposed unacceptability determination could place an undue burden on those entities mainly due to the amount of time and actions necessary to complete a successful blowing agent transition. For example, a recent review of the extruded polystyrene foam sector (which encompasses the largest use of HCFC–142b) found that companies in that industry would ''likely experience technical constraints with the alternatives'' if they had to transition before January 1, 2010 because of the time it takes to test and implement a new blowing agent, including completing equipment and process modifications as well as gaining building code approval for the new products (Docket # OAR–2004–0507–003). Equally, many of the polyurethane manufacturers using HCFC–22 are making foam products that have thermal insulation requirements, such as walk-in coolers or metal panels. Before transitioning, those manufacturers would need to undertake several preparatory actions, such as:

(1) Making changes to existing equipment in order to optimize production and ensure worker safety;

(2) Establish raw material suppliers;

(3) Develop formulations;

(4) Test final products; and

(5) Obtain final product review and approval by industry and governmental standard setting bodies for flammability, building codes, and other safety and performance requirements).

Based on the transition requirements described above, EPA believes it is appropriate that existing users of HCFC–22 and HCFC–142b in foam applications be allowed to continue using these chemicals until January 1, 2010 in order to ensure a safe transition to non-ODP alternative blowing agents. The SNAP program is designed to encourage the transition away from ozone depleting chemicals, however, the balance of the factors related to existing users of HCFC–22 and HCFC–142b discussed above outweigh EPA's statutory interest in applying the unacceptability determination immediately to all users. EPA believes its goal of encouraging the transition away from HCFC–22 and HCFC–142b is still satisfied as new use of these substances will not be permitted in the foam sector and existing users will begin their transition to non-ODP alternatives. Due to the fact that ozone-friendly alternatives are available in nearly all foam applications, EPA strongly encourages all existing users of HCFC–22 and HCFC–142b to begin their transition to alternatives immediately and to complete the transition as soon as possible prior to January 1, 2010.

Request for Comments on Unique Applications Requiring HCFC–22 and HCFC–142b

In past rulemakings, where necessary, EPA has allowed specific, unique applications to continue use of a substitute that EPA has found to be unacceptable. For example, in the recent SNAP final rule published on September 30, 2004, EPA found the use of HCFC–141b unacceptable in all foam applications. However, based on technical information submitted to EPA during the comment period, the Agency exempted ''the use of HCFC–141b for space vehicle, nuclear and defense foam applications from the unacceptability determination'' (69 FR 58272). EPA is not aware of any specialized foam applications that would require continued use of HCFC–22 or HCFC–142b beyond January 1, 2010; however, the Agency is requesting comment about any applications that would require the use of HCFC–22 or HCFC–142b as blowing agents beyond January 1, 2010. When submitting information about such an application, please provide as much detail as possible about the application, the technical constraints to using alternatives, and the specific plan to implement alternatives, as well as any other relevant information.

As discussed above, ozone-friendly alternatives exist for nearly all foam applications, particularly in the pour foam products found in the end uses of commercial refrigeration, sandwich panels, and slabstock and ''other'' foam. Accordingly, EPA is proposing to (1) list HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in commercial refrigeration, sandwich panels, and slabstock and ''other'' foam; and (2) list HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs in all foam end uses. These listings would be effective 60 days after the publication of the final rule in the **Federal Register**. Existing users of HCFC–22 and HCFC–142b as of November 4, 2005 would be grandfathered until January 1, 2010.

IV. Summary

A major objective of the SNAP program is to facilitate the transition from ozone-depleting chemicals by promoting the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170(a)). In this light, a key policy interest of the SNAP program is promoting the shift from ODSs to alternatives posing lower overall risk and that are currently or potentially available (59 FR 13044). Today's proposal to list HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in certain foam applications and as unacceptable substitutes for CFCs in all foam end uses is based on EPA's finding that the use of HCFC–22 and HCFC–142b in applications where non-ozone depleting alternatives are technically viable and commercially available, would contribute to unnecessary depletion of the ozone layer, and will delay the transition to alternatives that pose lower overall risk to the health and the environment. EPA is allowing existing users of HCFC–22 and HCFC–142b to continue use until no later than January 1, 2010 to ensure that they will be able to adjust their manufacturing processes to safely accommodate the use of non-ODP alternatives.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this proposal a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226.

This action does not impose any new information collection burden. OMB has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226. This Information Collection Request (ICR) included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/Toxic Substances Control Act (TSCA) Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small volume uses.

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Office of Information Collection, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The RFA requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) 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, a small entity is defined as:

(1) A small business that has fewer than 500 employees;

(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.

The types of businesses that are subject to today's final rule include businesses that manufacture polyurethane/polyisocyanurate foam systems (NAICS 326150) and businesses that use polyurethane/polyisocyanurate systems to apply insulation to buildings, roofs, pipes, etc. (NAICS 326150).

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA does not believe that small businesses will be adversely impacted by this proposal. The majority of the small businesses in the foam industry operate in the polyurethane foam sector as opposed to the extruded polystyrene foam sector (this rule covers both sectors). In the context of this proposal, small businesses (if they are still using an HCFC at all) are likely using HCFC–22 to manufacture pour foam applications such as commercial refrigeration, sandwich panels, and slabstock and ''other'' foam. As explained below, the polyurethane pour foam sector operates differently than other SNAP sectors in that a small number of companies supply a much larger number of actual pour foam manufacturers.

There are approximately 20 formulators in the U.S. that supply pour foam manufacturers foam systems which consist of two drums of ingredients including the blowing agent (e.g., HCFC–22). Some of the formulators are large businesses but many are small and their customers, the manufacturers, number in the thousands. The pour foam manufacturers use the foam system to produce the actual foam product (e.g., vending machine or metal panel). In this situation, the formulators are responsible for implementing alternatives to the ozone-depleting blowing agent and providing the pour foam manufacturers with systems that produce foam meeting the necessary requirements, technical or otherwise. However, both the formulators and pour foam manufacturers are subject to SNAP regulations because both use the blowing agent.

Information in the docket OAR–2004–0507 demonstrates that non-ODP alternatives are technically viable and commercially available. In fact, small businesses at both the formulator and pour foam manufacturer levels are already supplying and using non-ODP alternatives in applications such as commercial refrigeration, sandwich panels and slabstock and ''other'' foam. Therefore, those small businesses will not be adversely affected by the proposal to find HCFC–22 and HCFC–142b unacceptable for use because they have already implemented alternatives.

Equally, those small businesses that are still using HCFC–22 in pour foam applications will not be significantly impacted by this rulemaking. It is estimated that there are thousands of pour foam manufacturers, many of which are small businesses. However, these manufacturers will not be adversely impacted by this proposed rule because they buy their pour foam systems from the approximately 20 pour foam formulators discussed above. It is those 20 formulators that are responsible for implementing the alternatives to ozone depleting blowing agents (HCFC–22 and HCFC–142b) and providing a foam system to the pour foam manufacturers that meets all technical and performance requirements.

In addition, manufacturers and users of HCFCs have had more than 10 years to prepare for the January 1, 2010 deadline for phasing out production of HCFC–22 and HCFC–142 in the U.S. since the HCFC phaseout schedule was

established by a separate EPA regulation in 1993 (58 FR 65018). Today's proposal does not effect that long-standing phaseout date but rather would allow continued use of these chemicals until the phaseout deadline of January 1, 2010. Furthermore, the costs of the HCFC phaseout and the transition to non-ozone depleting alternatives were accounted for in a Regulatory Impact Analysis (RIA) that was performed in 1993 for the phaseout rule mentioned above. A memo found in the docket at OAR–2004–0507–0012 details the impacts of this proposal, including a discussion of the related 1993 phaseout rule and RIA, on both the pour foam formulators and pour foam manufacturers and concludes there will not be significant impact on a substantial number of small businesses. In fact, most formulators that are still using HCFC–22 and/or HCFC–142b have also implemented alternatives and sell both types of systems to their customers, the manufacturers (OAR–2004–0507–0008). Based on this, it is clear that alternatives to ODS have been identified and there are no technical constraints to implementing those alternatives.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to further reduce the impact of this rule on small entities. Based on acceptability decisions in previous final rules, the Agency believes that some existing users of HCFC–22 and HCFC–142b, including small businesses, invested in good faith in SNAP-approved alternatives that EPA now finds unacceptable. Accordingly, it is appropriate for EPA to balance their interest against our statutory obligation to facilitate the transition away from ozone depleting chemicals as required by the four part test established in *Sierra Club* v. *EPA*. Grandfathering existing users of HCFC–22 and HCFC–142b, some of which are small businesses, allows those users approximately four years to transition to ozone-friendly alternatives. This is the time cited by small businesses when explaining their transition process in comments to separate but related rulemakings (see Air Docket A–2000–18) as well as being the time that has been needed for the transitions from other ODS, the most recent one being HCFC–141b.

Grandfathering existing use of HCFC–22 and HCFC–142b until January 1, 2010 aligns the unacceptability determination with the production phaseout date of those two chemicals. In many cases, companies plan their transition to non-ODP alternatives around the production and import phaseout deadline, due to both the greatly restricted supply and higher prices associated with the phased out ODS. Companies, in commenting on EPA's 2000 proposal to find HCFC–22 and HCFC–142b unacceptable as substitutes for CFCs objected to the fact that EPA was proposing an unacceptability determination before the production and import phaseout. Those commenters suggested EPA move the unacceptability determination to a later date that was in line with the phaseout (i.e., January 1, 2010). The 2003 phaseout of HCFC–141b demonstrated that restricted supply of that chemical resulted in higher prices for the foam sector which inevitably had some impact on the small businesses both at the formulator and manufacturer level. This proposed unacceptability determination would avoid that situation and level the playing field in the foam industry by requiring all businesses to transition from HCFC–22 and HCFC–142b on the same date, and in accordance with the production and import phaseout date (the date many of them are likely planning on completing their transition). Therefore, this proposal does not place any additional burden on existing users of HCFC–22 and HCFC–142b in the foam sector that have both had sufficient advance notice and had planned to transition to non-ODP alternatives on or before the production phaseout date.

As discussed in the preamble and noted in the docket, there are numerous alternatives that are technically viable and available for all foam applications. In fact, some users have already transitioned away from HCFC–22 and HCFC–142b, particularly in pour foam applications (Docket # OAR–2004–0507, Documents 0004 through 0011). The actions proposed here may well provide benefits to small businesses who have transitioned to alternatives and made good faith efforts and investments in the transition because they will be able to compete on a level playing field with those that are still using ODS blowing agents. EPA continues to be interested in the potential impacts of the proposed rule on small entities, and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule does not affect State, local, or tribal governments. The enforceable requirements of the rule for the private sector affect only a small number of foam manufacturers that could potentially have switched to use HCFC–22 and HCFC–142b in the United States and those currently using HCFC–22 and HCFC–142b. With regard to potential new users, there are technically viable alternatives for those manufacturers. With regard to existing users, there are viable alternatives that will be feasible to use once the manufacturers have made the necessary adjustments to its facility and products. The impact of this rule on the private sector is less than $100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory

requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposal applies directly to facilities that use these substances and does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: Protection of Children from Environmental Health & 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 proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The use of HCFC–22 and HCFC–142b in foam manufacture occurs in the workplace where we expect adults are more likely to be present than children, and thus, the agents do not put children at risk disproportionately.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact the manufacture of foam using HCFC–22 and HCFC–142b. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VI. Additional Information

For more information on EPA's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion Web site at ''*http://www.epa.gov/ozone/*'' and from the Stratospheric Protection Hotline number at (800) 296–1996.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: October 28, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding Appendix N to read as follows:

Appendix N to Subpart G of Part 82—Unacceptable Substitutes Listed in the [date of publication of final rule in the **Federal Register**] final rule, effective [date 60 days after **Federal Register** publication date of final rule].

FOAM BLOWING UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
Replacements for HCFC–141b in the following rigid polyurethane applications: —Commercial Refrigeration —Sandwich Panels —Slabstock and Other Foams	HCFC–22, HCFC–142b	Unacceptable [1]	Alternatives exist with lower or zero-ODP.
Replacements for CFCs in the following foam applications: —Rigid polyurethane and polyisocyanurate laminated boardstock —Rigid polyurethane appliance —Rigid polyurethane spray and commercial refrigeration, and sandwich panels —Rigid polyurethane slabstock and other foams —Polystyrene extruded insulation boardstock and billet —Phenolic insulation board and bunstock —Flexible polyurethane —Polystyrene extruded sheet	HCFC–22, HCFC–142b	Unacceptable [2]	Alternatives exist with lower or zero-ODP.

[1] The unacceptability determination is effective on January 1, 2010 for existing users of HCFC–22 and HCFC–142b as of November 4, 2005 of this proposed rule.

[2] The unacceptability determination is effective on January 1, 2010 for existing users of HCFC–22 and HCFC–142b as of November 4, 2005 of this proposed rule.

[FR Doc. 05–21927 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

COMMISSION ON CIVIL RIGHTS

45 CFR Part 703

Membership Requirement of State Advisory Committees

AGENCY: U.S. Commission on Civil Rights Commission.

ACTION: Notice of proposed rule change in the State Advisory Committee (SAC) membership criteria with request for comments.

SUMMARY: The United States Commission on Civil Rights proposes to amend its regulation on the SAC membership criteria to ensure both diversity and nondiscrimination are considered in its SAC member appointment process.

DATES: Comments should be received on or before December 5, 2005 to be considered in the formulation of final rule.

ADDRESSES: Address all comments about the proposed rule change in the SAC membership criteria to: U.S. Commission on Civil Rights, Office of General Counsel, Attn: Christopher Byrnes, Acting Deputy General Counsel, 624 Ninth Street, NW., Suite 620, Washington, DC 20425. If you prefer to send your comments via e-mail, use the following address: *cbyrnes@usccr.gov.* You must include the term ''SAC Membership Comments'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Christopher Byrnes, Acting Deputy General Counsel, Telephone: (202) 376–7700 or via e-mail: *cbyrnes@usccr.gov.*

SUPPLEMENTARY INFORMATION: On October 31, 2005, the U.S. Commission on Civil Rights approved the proposed rule for public comments. The Commission invites you to submit comments regarding the proposed change in the SAC membership criteria. Please clearly identify the specific proposed criteria each comment addresses.

We will announce the final SAC membership criteria in a notice in the **Federal Register**. We will determine the final regulation on SAC membership criteria after considering responses to this notice and other information available to the Commission.

List of Subjects in 42 CFR Part 703

Advisory committees, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commission on Civil Rights proposes to amend 45 CFR part 703 as follows:

PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

1. The authority citation for Part 703 continues to read as follows:

Authority: 42 U.S.C. 1975a(d).

2. Revise § 703.5 to read as follows:

§ 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each Advisory Committee shall consist of at least 11 members appointed by the Commission. Members of the Advisory Committees shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the Advisory Committee may, at any time, be removed by the Commission.

(b) No person is to be denied an opportunity to serve on a State Advisory Committee because of race, age, sex, religion, national origin, or disability. The Commission shall encourage membership on the State Advisory Committee to be broadly diverse.

(c) State Advisory Committee members shall represent a diversity of skills and experiences, including, but not limited to, social science research, legal research and analysis, and statistical analysis. Educators, lawyers, business and labor leaders, social scientists, researchers, and news gatherers are some of the more important professions or activities or avocations that should be represented on the State Advisory Committees. The State Advisory Committees should also contain people knowledgeable of the State's governmental machinery and public service sector, and people involved in and drawn from such influential sectors as business and financial communities, organized labor, the news media, and religious groups.

(d) Each State Advisory Committee should contain men or women who have demonstrated an interest in the civil rights issues of color, race, religion, sex, age, disability, and national origin and in voting rights.

(e) Both political parties should be represented in each State Advisory Committee.

Dated: October 31, 2005.

Kenneth L. Marcus,

Staff Director/Acting General Counsel.

[FR Doc. 05–21986 Filed 11–3–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 040525161–5274–05; I.D. No. 052104F]

RIN No. 0648–AR93

Endangered and Threatened Species: Request for Comment on Alternative Approach to Delineating 10 Evolutionarily Significant Units of West Coast Oncorhynchus mykiss

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

ACTION: Proposed rule; request for comment.

SUMMARY: In June 2004, we (NMFS) proposed that 10 Evolutionarily Significant Units (ESUs) of West Coast *Oncorhynchus mykiss* be listed as endangered or threatened species under the Endangered Species Act (ESA). We have reconsidered the preliminary decision to apply the Pacific salmon ESU Policy to these stocks and seek comment on our proposed application of the joint NMFS/U.S. Fish and Wildlife Service (FWS) ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the ESA'' (DPS Policy) to the delineation of *Oncorhynchus mykiss* distinct population segments (DPSs).

DATES: All comments must be received no later than 5 p.m. Pacific standard time on December 5, 2005.

ADDRESSES: You may submit comments and information by any of the following methods. Please identify submittals as pertaining to the ''Proposed Steelhead DPSs and Listings.''

- E-mail: SteelheadDPS.nwr@noaa.gov. Include ''Proposed Steelhead DPSs and Listings'' in the subject line of the message.
- Internet: Comments may also be submitted electronically through the Federal e-Rulemaking portal at: *http://www.regulations.gov*.
- Mail: Submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, Oregon 97232.
- Hand Delivery/Courier: You may hand-deliver written comments to our office during normal business hours at the street address given above.
- Fax: 503–230–5441

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region, (562) 980–4021, Dr. Scott Rumsey, NMFS, Northwest Region, (503) 872–2791, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401. Copies of the **Federal Register** notices, additional steelhead-related documents, and a list of all the references cited in this notice are available on the Internet at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Policies for Delineating Species under the ESA

Section 3 of the ESA defines the term species to include ''any subspecies of fish or wildlife or plants, and any *distinct population segment* of any species of vertebrate fish or wildlife which interbreeds when mature'' [emphasis added]. In 1991 we issued a policy for making species determinations for Pacific salmon (''ESU Policy;'' 56 FR 58612; November 20, 1991). Under this policy a group of Pacific salmon populations is considered an ESU if it is substantially reproductively isolated from other conspecific populations, and it represents an important component in the evolutionary legacy of the biological species. Under that policy, the biological ESU is considered to be a ''distinct population segment'' and thus a ''species'' under the ESA. In 1996, we and FWS adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722; February 7, 1996). The DPS Policy adopts similar but slightly different criteria from the ESU Policy for determining when a group of organisms constitutes a DPS: it must be discrete from other populations, and it must be significant to its taxon. A group of organisms is discrete if it is ''markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, and behavioral factors.'' Although the ESU Policy does not specifically apply to steelhead, the DPS Policy states that NMFS will continue to implement the ESU Policy with respect to Pacific salmonids (inclusive of *O. mykiss*).

Previous Federal ESA Actions Related to West Coast Steelhead

In 1996, we completed a comprehensive status review of West Coast steelhead (Busby *et al.*, 1996) that resulted in proposed listing determinations for 10 steelhead ESUs, 5 as endangered and 5 as threatened species (61 FR 41541; August 9, 1996). On August 18, 1997, we listed five of the ESUs, two as endangered and three as threatened (62 FR 43937) and announced a 6–month extension of final listing determinations for the other five ESUs, pursuant to section 4(b)(6)(B)(I) of the ESA (62 FR 43974). On March 10, 1998, we proposed to list two additional steelhead ESUs as threatened (63 FR 11798). On March 19, 1998, we listed as threatened two of the steelhead ESUs that were deferred in August 1997 and designated the other three proposed ESUs as candidate species (63 FR 13347). On March 25, 1999, we listed as threatened the two ESUs proposed in March 1998 (64 FR 14517). On February 11, 2000, we proposed to list the Northern California steelhead ESU as threatened (65 FR 6960) and listed that ESU as threatened on June 7, 2000 (65 FR 36074). Under these listing decisions, there are currently 10 listed steelhead ESUs, two endangered (Southern California and Upper Columbia River) and eight threatened (South-Central California, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, and Snake River Basin).

In our 1997 steelhead listings (62 FR 43937), we noted uncertainties about the relationship of resident and anadromous *O. mykiss*, yet concluded that the two forms are part of a single ESU where the resident and anadromous *O. mykiss* have the opportunity to interbreed. FWS disagreed that resident *O. mykiss* should be included in the steelhead ESUs and advised that the resident fish not be listed. Accordingly, we decided to list only the anadromous *O. mykiss* at that time. That decision was followed in each of the subsequent steelhead listings described in the preceding paragraph.

In 2001, the U.S. District Court in Eugene, Oregon, set aside the 1998 threatened listing of the Oregon Coast coho ESU (*Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154 (D. Or. 2001)) (Alsea decision). In the Oregon Coast coho listing (63 FR 42587; August 10, 1998), we did not include in the listing 10 hatchery stocks determined to be part of the Oregon Coast coho ESU. The court upheld our policy of

considering an ESU to be a DPS, but ruled that once we had delineated a DPS, the ESA did not allow listing a subset of that DPS. In response to the Alsea decision and several listing and delisting petitions, we announced we would conduct an updated status review of 27 West Coast salmonid ESUs, including the 10 listed steelhead ESUs (67 FR 6215, February 11, 2002; 67 FR 48601, July 25, 2002; 67 FR 79898, December 31, 2002).

On June 14, 2004, we proposed to continue applying our ESU Policy to the delineation of DPSs of *O. mykiss*, and to list the 10 *O. mykiss* ESUs including the resident fish that co-occur with the anadromous form (69 FR 33102). We proposed to list one ESU in California as endangered (Southern California), and nine ESUs in California, Oregon, Washington, and Idaho as threatened (South-Central California, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, Snake River Basin, and Upper Columbia). In the proposed rule, we noted that the *Alsea* decision required listing of an entire ESU/DPS, in contrast to our prior steelhead-only listings, and stated the scientific principles and working assumptions that we used to determine whether particular resident groups were part of an *O. mykiss* ESU that included anadromous steelhead (69 FR 33102). We proposed that where resident (rainbow trout) and anadromous (steelhead) *O. mykiss* occur in the same stream, they are not ''substantially reproductively isolated'' from one another and are therefore part of the same ESU.

Following an initial public comment period of 90 days, we twice extended the public comment period for an additional 36 and 22 days (69 FR 53031, August 31, 2004; 69 FR 61348, October 18, 2004), respectively. During the comment period, we received numerous comments disagreeing with our proposal to include resident populations in the subject O. mykiss ESUs (in general and for specific resident populations) and criticizing how we considered resident O. mykiss in evaluating the risk to the continued existence of the whole ESU.

On June 7, 2005, FWS wrote to NMFS (FWS, 2005), stating its concerns about the factual and legal bases for our proposed listing determinations for 10 *O. mykiss* ESUs, specifying issues of substantial disagreement regarding the relationship between anadromous and resident *O. mykiss*. On June 28, 2005, we published a notice in the **Federal Register** announcing the ESA statutory 6–month extension of the final listing determinations for the subject *O. mykiss* ESUs to resolve the substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determinations (70 FR 37219). As a result of these comments, we are re-opening the comment period to consider whether the final rule should delineate 10 steelhead-only DPSs, list one DPS in California as endangered (Southern California), and list the remaining nine DPSs in California, Oregon, Washington, and Idaho as threatened (South-Central California, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, Snake River Basin, and Upper Columbia).

Application of the Joint DPS Policy for Determination of Species

In its June 7, 2005, letter recommending that the final listing determinations for the 10 *O. mykiss* ESUs under review be extended, FWS suggested that we ensure that our delineation of O. mykiss ESUs complies with the DPS Policy. We agree, in this case, that it is appropriate that we consider departing from our past practice of applying the ESU Policy to *O. mykiss* stocks, and instead apply the DPS Policy in determining ''species'' of *O. mykiss* for listing consideration. Such an approach would also be consistent with use of the DPS Policy by the agencies in defining DPSs of Atlantic salmon (*Salmo salar*; 65 FR 69459; November 17, 2000). The primary difference in the application of the two policies is that the ESU Policy relies on ''substantial reproductive isolation'' as the primary factor in delineating a group of organisms, while the DPS Policy relies on ''marked separation'' to delineate the group. Within a discrete group of *O. mykiss* populations, the resident and anadromous life forms of O. mykiss remain ''markedly separated'' as a consequence of physical, physiological, ecological, and behavioral factors. Despite the apparent lack of reproductive isolation between the two forms within a given population or group of populations, under the DPS Policy anadromous and resident *O. mykiss* may not warrant delineation as part of the same DPS.

In order to provide sufficient notice to the public to allow for informed comment, we provide the following analysis of how the proposed application of the DPS Policy to O. mykiss stocks would affect the proposed listings.

Proposed Evaluation of Discreteness under the DPS Policy

Under the DPS Policy a population segment may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same biological taxon as a consequence of physical, physiological, ecological, or behavioral factors; or

(2) It is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management or conservation status.

The discreteness of the 10 West Coast steelhead DPSs under consideration relative to other population groups of the *O. mykiss* species is well documented by the previous NMFS status reviews that delineated steelhead ESUs (e.g., NMFS, 1997; Busby *et al.*, 1996, 1997, 1999; Adams, 2000; Good *et al.*, 2005). These reviews concluded that the ESUs respectively are substantially reproductively isolated based on established phylogenetic groupings, available population genetic data, differences in migration and spawn timing, patterns in the duration of freshwater and marine residence, and geographic separation of populations. These traits that established the substantial reproductive isolation of the respective steelhead ESUs under the ESU Policy also satisfy the ''discreteness'' criterion of the DPS Policy. In the following paragraphs we address the question of whether the co-occurring anadromous and resident life forms within these proposed steelhead DPSs are themselves discrete or warrant inclusion in the same DPS.

Under the ESU Policy we have previously determined that where resident and anadromous *O. mykiss* co-occur there is likely to be interbreeding between the two life-history forms, and that co-occurring resident and anadromous *O. mykiss* below long-standing impassable barriers are part of the same ESU. This conclusion was based on empirical studies that show that resident and anadromous *O. mykiss* are similar genetically when they co-occur with no physical barriers to migration or interbreeding (Chilcote, 1976; Currens *et al.*, 1987; Leider *et al.*, 1995; Busby *et al.*, 1996; Pearsons *et al.*, 1998), and the observation that individuals can occasionally produce progeny of the alternate life-history form (Shapovalov and Taft, 1954; Burgner *et al.*, 1992; Mullan *et al.*, 1992; Zimmerman and Reeves, 2000; Kostow, 2003; Ardren, 200; Blouin, 200; Pearsons *et al.*, 2003; Marshal and

Foley, 2004; Narum *et al.*, 2004; Seamons *et al.*, 2004).

The discreteness criterion of the DPS Policy, however, does not rely on reproductive isolation but on the marked separation of population groups as a consequence of biological factors. Despite the apparent reproductive exchange between resident and anadromous *O. mykiss*, the two life forms remain markedly separated physically, physiologically, ecologically, and behaviorally. Steelhead differ from resident rainbow trout physically in adult size and fecundity, physiologically by undergoing smoltification, ecologically in their preferred prey and principal predators, and behaviorally in their migratory strategy. Where the two life forms co-occur, adult steelhead typically range in size from 40–72 cm in length and 2–5 kg body mass, while adult rainbow trout typically range in size from 25–46 cm in length and 0.5–2 kg body mass (Shapovalov and Taft, 1954; Wydoski and Whitney, 1979; Jones, 1984). Steelhead females produce approximately 2,500 to 10,000 eggs, and rainbow trout fecundity ranges from 700 to 4,000 eggs per female (Shapovalov and Taft, 1954; Buckley, 1967; Moyle, 1976; McGregor, 1986; Pauley *et al.*, 1986), with steelhead eggs being approximately twice the diameter of rainbow trout eggs or larger (Scott and Crossman, 1973; Wang, 1986; Tyler *et al.*, 1996). Steelhead undergo a complex physiological change that enables them to make the transition from freshwater to saltwater (smoltification), while rainbow trout reside in freshwater throughout their entire life cycle. While juvenile and adult steelhead prey on euphausiid crustaceans, squid, herring, and other small fishes in the marine environment, the diet of adult rainbow trout is primarily aquatic and terrestrial insects and their larvae, mollusks, amphipod crustaceans, fish eggs, and minnows (LeBrasseur, 1966; Scott and Crossman, 1973; Wydoski and Whitney, 1979). Finally, steelhead migrate several to hundreds of miles from their natal streams to the ocean, and spend up to 3 years in the ocean migrating thousands of miles before returning to freshwater to spawn (Busby *et al.*, 1996). Rainbow trout, in contrast, may exhibit seasonal migrations of tens of kilometers but generally remain associated with their natal drainages (Meka *et al.*, 1999).

Given the marked separation between the anadromous and resident life-history forms in physical, physiological, ecological, and behavioral factors, we may conclude that the anadromous steelhead populations are discrete from the resident rainbow trout populations within the DPSs under consideration. If so, we would conclude that the Southern California, South-Central California, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, Upper Columbia River, and Snake River Basin steelhead DPSs under consideration satisfy the ''discreteness'' criterion under the DPS Policy.

Proposed Evaluation of Significance under the DPS Policy

Under the DPS Policy, if a population group is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it belongs. Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species.

The significance of the 10 West Coast steelhead DPSs under consideration to the O. mykiss species is well documented by the previous NMFS status reviews that delineated steelhead ESUs (e.g., NMFS, 1997; Busby *et al.*, 1996, 1997, 1999; Adams, 2000; Good *et al.*, 2005). These reviews concluded that the steelhead population groups respectively represent an important component in the evolutionary legacy of the species based on unique or unusual life-history, genetic, and ecological characteristics and occupied ecoregion(s) (i.e., unique geographic regions defined by climatic, geologic, hydrologic, and floral composition characteristics; Donley *et al.*, 1979; Jackson, 1993; Omernik, 1987). These traits that established the evolutionary importance of the respective steelhead population groups under the ESU Policy also satisfy the ''significance'' criterion of the DPS Policy. These proposed steelhead DPSs, if lost, would represent: the loss of unusual or unique habitats and ecosystems occupied by the species; a significant gap in the species' range; and/or a significant loss to the ecological, life-history, and genetic diversity of the taxon. We may conclude, based on our previous ESU determinations, that the Southern California, South-Central California, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, Upper Columbia River, and Snake River Basin steelhead DPSs under consideration satisfy the ''significance'' criterion under the DPS Policy.

Proposed Alternative Species Determinations for Steelhead DPSs

If we were to apply the DPS Policy to West Coast *O. mykiss*, based on the considerations discussed above, the previously proposed species determinations for 10 West Coast *O. mykiss* ESUs (see 69 FR 33102; June 14, 2004) may be revised to consist of these steelhead-only DPSs. As noted above, the consideration of substantial reproductive isolation for the previously defined steelhead ESUs directly informs the delineation of discrete steelhead-only population units under the DPS Policy. Under this alternative approach the geographic boundaries for the steelhead-only DPSs would not change from those previously delineated for the steelhead or *O. mykiss* ESUs. The steelhead-only DPSs under consideration would include ''all naturally spawned populations of anadromous *O. mykiss* (steelhead)'' within the geographic boundaries of a given DPS.

On June 28, 2005, we finalized a new policy for the consideration of hatchery-origin fish in ESA listing determinations (''Hatchery Listing Policy;'' 70 FR 37204). Under the Hatchery Listing Policy hatchery stocks are considered part of an ESU if they exhibit a level of genetic divergence relative to the local natural population(s) that is no more than what occurs within the ESU (70 FR at 37215; June 28, 2005). Consistent with the June 14, 2004, proposed listing determinations (69 FR 33102; June 14, 2004) and the recent final listing determinations for 16 West Coast salmon ESUs (70 FR 37160; June 28, 2005), hatchery stocks would be included in a steelhead DPS if they are no more than moderately diverged from local, native populations in the watershed(s) in which they are released. The level of divergence for hatchery programs associated with the subject steelhead DPSs is reviewed in the 2003 Salmon and Steelhead Hatchery Assessment Group Report (NMFS, 2003), and the 2004 Salmonid Hatchery Assessment and Inventory Report (NMFS, 2004b). Were we to apply the DPS Policy, the DPS membership of hatchery programs included in the steelhead DPSs would be unchanged from that proposed for the 10 *O. mykiss*

ESUs (see Table 2, 69 FR at 33120; June 14, 2004).

Below we discuss proposed clarifying changes to the proposed Central California Coast and Northern California steelhead DPSs. These proposed clarifying changes are relevant whether we continue to use *O. mykiss* ESUs inclusive of anadromous and resident life forms, or instead we take action on steelhead-only DPSs.

Proposed Central California Coast Steelhead DPS

The Central California Coast steelhead ESU previously included all naturally spawned populations of steelhead in California streams from the Russian River to Aptos Creek, and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), excluding the Sacramento-San Joaquin River Basin (62 FR 43937; August 18, 1997). Recent information, however, indicates that those portions of the ESU in San Francisco Bay and eastward towards the Central Valley were incorrectly described in the 1997 listing notice and need to be clarified. Accordingly, the specification of a proposed Central California Coast steelhead DPS would include all naturally spawned populations of anadromous *O. mykiss* (steelhead) in coastal streams from the Russian River (inclusive) to Aptos Creek (inclusive), and the drainages of San Francisco, San Pablo, and Suisun Bays eastward to Chipps Island at the confluence of the Sacramento and San Joaquin Rivers and in tributary streams to Suisun Marsh including Suisun Creek, Green Valley Creek, and an unnamed tributary to Cordelia Slough (commonly referred to as Red Top Creek), exclusive of the Sacramento-San Joaquin River Basin of the California Central Valley.

Proposed Northern California Steelhead DPS

The Northern California *O. mykiss* ESU previously included all naturally spawned steelhead in California coastal river basins from Redwood Creek south to the Gualala River (inclusive) (65 FR 36074; June 7, 2000). Recently, however, we have discovered that there is a coastal section between the southern boundary of the proposed Northern California DPS (the Gualala River) and the northern boundary of the proposed Central California Coast steelhead DPS (the Russian River) that contains several small streams that support steelhead. No genetic or other information is currently available for determining which proposed DPS includes these small streams. We believe that the geographic proximity and similarity in environmental and ecological conditions of these small streams suggests that they would be placed in the Northern California steelhead DPS. Accordingly, we would clarify the geographic boundaries of the Northern California steelhead DPS to include all naturally spawned populations of anadromous *O. mykiss* (steelhead) in California coastal river basins from Redwood Creek southward to, but not including, the Russian River.

Evaluation of Species' Status

NMFS' Pacific Salmonid Biological Review Team (BRT) (an expert panel of scientists from several Federal agencies including NMFS, FWS, and the U.S. Geological Survey) reviewed the viability and extinction risk of naturally spawning populations in the 10 steelhead ESUs that were the subject of our June 2004 proposed rule (Good *et al.*, 2005). The BRT evaluated the risk of extinction faced by naturally spawning populations in the 10 *O. mykiss* ESUs corresponding to the steelhead DPSs addressed in this request for comment (Good *et al.*, 2005). Although the ESUs reviewed by the BRT included co-occurring populations of resident *O. mykiss*, little or no population data are available for most resident *O. mykiss* populations. The BRT's findings regarding extinction risk are based on the status of the steelhead populations in the ESUs reviewed. Where available, the BRT incorporated information about resident populations into their analyses of extinction risk. For the Southern California, South-Central California Coast, Central California Coast, California Central Valley, Middle Columbia River, Upper Columbia River, and Snake River Basin *O. mykiss* ESUs the BRT noted that the presence of qualitatively abundant resident populations reduced risks to the ESU's abundance (see NMFS, 2004a; Good *et al.*, 2005). However, the BRT concluded for all the *O. mykiss* ESUs reviewed that the contribution of the resident life-history form to the viability of an *O. mykiss* ESU in-total is unknown, and may not substantially reduce the ESU's level of extinction risk. Therefore, the BRT's extinction risk findings may directly inform evaluations of extinction risk for the steelhead DPSs under consideration.

Were we to apply the DPS Policy, we would assess the effects of hatchery programs on the extinction risk of a DPS in-total (i.e., the collective extinction risk of natural- and hatchery origin components within the DPS) on the basis of the factors that the BRT determined are currently limiting the DPS (e.g., abundance, productivity, spatial structure, and diversity), and how artificial propagation efforts within the DPS affect those factors. The Artificial Propagation Evaluation Workshop (NMFS, 2004c) reviewed the BRT's findings (NMFS, 2003; Good *et al.*, 2005), evaluated the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b), and assessed the overall extinction risk of DPSs with associated hatchery stocks. The reader is referred to the BRT's report (Good *et al.*, 2005), the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b), and the Workshop Report (NMFS, 2004c) for more detailed descriptions of the viability of individual natural populations and hatchery stocks within these DPSs.

Analysis of Efforts Being Made to Protect Proposed West Coast Steelhead DPSs

In the proposed rule addressing 10 *O. mykiss* ESUs we reviewed protective efforts ranging in scope from regional conservation strategies to local watershed initiatives (see 69 FR 33102; June 14, 2004). We preliminarily concluded that protective efforts collectively do not provide sufficient certainty of implementation and effectiveness to substantially ameliorate the level of assessed extinction risk for all but one of the steelhead ESUs under consideration (see the June 14, 2004, proposed rule for a summary of the relevant protective efforts (69 FR 33102) benefitting the California Central Valley ESU and a description of the proposed finding that these efforts mitigate the ESU's level of extinction risk (69 FR 33102)). While we acknowledge that many of the ongoing protective efforts are likely to promote the conservation of listed salmonids, most efforts are relatively recent and have yet to indicate their effectiveness. Also, few address conservation needs at scales sufficient to conserve entire ESUs. Under our proposed approach to apply the DPS Policy, we would likely conclude that existing protective efforts lack the certainty of implementation and effectiveness to substantially ameliorate the extinction risk of the steelhead DPSs under consideration (but for the proposed California Central Valley steelhead DPS, as noted above).

Proposed Listing Determinations

Under our proposed approach to apply the DPS Policy, we would likely conclude that the steelhead DPSs under consideration warrant listing under the ESA, based on the BRT's findings, our analysis of the contributions of artificial propagation, and our evaluation of protective efforts. We likely would list

the proposed Southern California steelhead DPS as an endangered species and list the proposed South-Central California, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, Upper Columbia River, and Snake River Basin steelhead DPSs as threatened species. The reader is referred to the final BRT report (Good *et al.*, 2005) and the previous proposed rule (69 FR 33102; June 14, 2004) for a more detailed description of a given DPS's status.

Prohibitions and Protective Regulations

In the case of threatened species, section 4(d) of the ESA leaves it to the Secretary's discretion whether and to what extent to extend the statutory 9(a) ''take'' prohibitions for endangered species, and directs the agency to issue regulations it considers necessary and advisable for the conservation of the species. On June 28, 2005, as part of the final listing determinations for 16 West Coast salmon ESUs (70 FR 37160), we amended and streamlined the previously promulgated 4(d) protective regulations for threatened salmon and steelhead. (The reader is referred to the June 2005 final rule for information on the specific changes promulgated).

The amended June 2005 4(d) rule applies to the eight steelhead-only ESUs currently listed as threatened under the ESA. Were we to apply the DPS Policy, the amended 4(d) rule would apply to eight of the steelhead DPSs under consideration: the South-Central California, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, and Snake River Basin steelhead DPSs. We would not make any changes in the protective regulations for these proposed threatened steelhead DPSs.

The Upper Columbia River steelhead ESU is currently listed as endangered and subject to the section 9(a) take prohibitions. As part of the June 2004 proposed listing determinations, we proposed to list the Upper Columbia River *O. mykiss* ESU as threatened, and to extend to it the amended 4(d) protective regulations for threatened species (69 FR 33102; June 14, 2004). Were we to apply the DPS Policy and list an Upper Columbia River steelhead DPS as threatened, we would extend to it the June 2005 amended 4(d) protective regulations. We believe that extending the amended 4(d) protective regulations would be necessary and advisable for the conservation of the steelhead in the Upper Columbia River. Such an extension of the 4(d) protective regulations would result in a reduction of the regulatory burden as the various 4(d) limits were not previously available for activities affecting the endangered Upper Columbia River steelhead ESU.

In the June 2005 amendments to the 4(d) protective regulations we amended the 4(d) limit that provides a temporary exemption for ongoing research and enhancement activities with pending applications (limit § 223.203(b)(2)). The existing deadline associated with this limit will expire December 28, 2005. We believe that ongoing research and enhancement activities that are important to the conservation and recovery of listed salmon and steelhead should not be interrupted. Were we to apply the DPS Policy and list nine steelhead-only DPSs as threatened, we would amend limit § 223.203(b)(2) to again provide a temporary exemption for ongoing research and enhancement activities affecting the subject steelhead DPSs.

Information Solicited

After considering information provided by the FWS and several public commenters, we have reconsidered the preliminary decision to apply the ESU Policy to these stocks and seek comment on the proposed application of the DPS Policy to the delineation of O. mykiss DPSs. To ensure that the final action resulting from the proposed rule to list 10 species of West Coast O. mykiss will be as accurate and effective as possible, and informed by the best available scientific and commercial information, we are re-opening the public comment period to solicit additional information, comments, and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties. We are particularly interested in receiving comment on the alternative approach to delineate and list steelhead-only DPSs of *O. mykiss*. Specifically, we seek comment on: the use of the DPS Policy as the basis for listing determinations with respect to *O. mykiss*; our proposed determination under the joint DPS Policy that the proposed steelhead DPSs are discrete from other such population groups of *O. mykiss*, and within these proposed DPSs that the anadromous and resident life forms are discrete and would not warrant delineation within the same DPS; our proposed determination under the DPS Policy that the proposed steelhead DPSs are significant to the *O. mykiss* species; our proposed conclusion that the BRT's risk assessments for *O. mykiss* ESUs directly inform the assessment of extinction risk for steelhead DPSs; and the proposed ESA listing determinations for the steelhead DPSs under consideration. Additionally, we seek comment on the clarifying changes to the proposed Central California Coast and Northern California steelhead DPSs.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or can be obtained from the Internet at: *http://www.nwr.noaa.gov*.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 1, 2005.

James W. Balsiger,

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

[FR Doc. 05–22043 Filed 11–3–05; 8:45 am]

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Notices

Federal Register
Vol. 70, No. 213
Friday, November 4, 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

Ashley National Forest Land and Resource Management Plan Revision; Ashley National Forest in Uintah, Duchesne, UT, Wasatch, Summit and Daggett Counties, UT, and Sweetwater County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of initiation to revise the Ashley National Forest Land and Resource Management Plan.

SUMMARY: The USDA Forest Service, Ashley National Forest is initiating a process to revise it's Land and Resource Management Plan (Forest Plan) in accordance with the 2005 Planning Rule at 36 CFR part 219 (FR Vol. 70, No. 3./ January 5, 205, 1023).

DATES: Public comments related to the need to revise the current Forest Plan are invited at any time during the revision process. We are currently seeking input on the need for change and the scope of the revision effort. This input would be most helpful to us if received prior to March 1, 2006.

ADDRESSES: Please send comments to Laura Jo West, Planning Team Leader at Ashley National Forest, 355 N. Vernal Ave., Vernal, Utah 84078 or via e-mail *ljwest@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Laura Jo West, Planning Team Leader at Ashley National Forest, 355 N. Vernal Ave., Vernal, Utah 84078; phone (435) 781–5167; fax (435) 781–51442; or e-mail *ljwest@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Ashley National Forest's current forest Plan was approved in October 1986. Since that time, conditions on the Forest and public uses of the Forest have changed. In addition, the Forest Service has issued new regulations implementing the National Forest Management Act. The new 2005 Planning Rule can be found at 36 CFR 219 (FR Vol. 70, No. 3./January 5, 2005, 1023). Preliminary needs for change in the current plan include (1) The need to articulate desired conditions for landscapes at a meaningful scale, (2) the need to provide a context for managing for increasing dispersed recreation use of the Forest, particularly motorized travel, (3) the need to purposefully manage for healthy watersheds and riparian systems, (4) the need to recognize the role of fire and fuels management on the Forest. The Forest is also proposing to limit the scope of Forest Plan revision to exclude changes in management direction for the congressionally designated areas of the Forest, namely the High Uintas Wilderness and the Flaming Gorge National Recreation Area. Limiting the scope in this manner does not imply that improvement to management direction in these areas is not warranted or needed. The intent of this limitation is to focus the revision process on those areas of the Forest where clearer management direction is most needed at this time. Workshops inviting participation in discussions of the scope of Forest Plan revision are tentatively scheduled for late January 2006. Information on workshop schedules as well as other information will be posted to the Forest Web site as it becomes available. Interested persons may also contact the Planning Team leader for more information about schedules and public involvement opportunities.

Responsible Official: Kevin B. Elliott, Forest Supervisor, Ashley National Forest, 355 N. Vernal Ave., Vernal, Utah 84078.

Public Involvement: The public is invited to participate in the development of the revised plan and will be invited to provide comment at several points during the revision process. Opportunities for public involvement will include open houses and workshops, public meetings, document review opportunities, and others. These will be posted on the Forest's Web site at *http://www.fs.fed.us/r4/ashley* and distributed via the Forest Plan revision mailing list. Click on the link to Forest Plan Revision that appears on the homepage. For more information about public involvement opportunities, contact Laura Jo West, Planning Team Leader at (435) 781–5167 or e-mail *ljwest@fs.fed.us.* To have your name added to our Forest Plan revision mailing list contact Rick Peaveler at (435) 781–5112, or e-mail *rpeaveler@fs.fed.us.*

Dated: October 27, 2005.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 05–21977 Filed 11–3–05; 8:45am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee, Sundance, WY, USDA Forest Service

ACTION: Notice of meeting.

SUMMARY: 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 Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, November 21, 2005 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on November 21st will begin at 6:30 p.m., at the USFS Bearlodge Ranger District office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include presentation of appointments to the Crook County Resource Advisory Committee, election of officers, review of previously funded projects and examination of new project proposals. A public forum will begin at 8:30 p.m. (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer at (307) 283–1361.

Dated: October 31, 2005.

Steven J. Kozel,

District Ranger, Bearlodge Ranger District.

[FR Doc. 05–22087 Filed 11–3–05; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: December 4, 2005.

ADDRESSES: Committee for Purchase From People Who are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed addition, the entity of the Federal Government identified in the notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Custodial Services, U.S. Army Reserve Center, Building 5003, Rural Route 2, San Antonio, Texas.

NPA: Professional Contract Services, Inc., Austin, Texas.

Contracting Activity: Army Contracting Agency, Southern Region, Fort Sam Houston, Texas.

G. John Heyer,

General Counsel.

[FR Doc. E5–6117 Filed 11–3–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 8 of the 2004 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 3, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to five years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on welfare reform and to identify individuals in SIPP sample households who were temporarily or permanently relocated due to Hurricane Katrina. These supplemental questions are included with the core and are referred to as a ''topical module.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided thesekinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2004 Panel is currently scheduled for 5 years and will include 15 waves of interviewing, which began in February 2004. The 2004 Panel is scheduled for 5 years because of the re-authoring of the instrument and re-engineering of the post data collection processing systems for the 2009 Panel. Approximately 62,000 households were selected for the 2004 Panel, of which, 46,500 were interviewed. We estimate that each household will contain 2.1 people 15 years of age or older, yielding 97,650 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2004 SIPP Panel during FY 2006. The total annual burden for 2004 Panel SIPP interviews will be 146,475 hours in FY 2006.

The topical modules for the 2004 Panel Wave 8 collect information about:

- Welfare Reform
- Hurricane Katrina Questions

Wave 8 interviews will be conducted from June 2006 through September 2006.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure the accuracy of responses. Reinterviews will require an additional 1,553 burden hours in FY 2006.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 5 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2004 Panel, respondents are interviewed a total of 15 times (15 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0905.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 97,650 people per wave.
Estimated Time Per Response: 30 minutes per person on average.
Estimated Total Annual Burden Hours: 148,028.
Estimated Total Annual Cost: The only cost to respondents is their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: October 31, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–21983 Filed 11–3–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–809, A–583–821)

Forged Stainless Steel Flanges from India and Taiwan; Expedited Five-year (Sunset) Reviews of Antidumping Duty Orders; Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2005, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on forged stainless steel flanges (flanges) from India and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of the notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and no responses from respondent interested parties, the Department conducted expedited sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders on flanges from India and Taiwan would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–1391.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department initiated sunset reviews of the antidumping duty orders on flanges from India and Taiwan pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). The Department received a notice of intent to participate from two domestic interested parties, Gerlin, Inc. and Maass Flange Corporation (collectively, petitioners), within the deadline specified in 19 C.F.R. § 351.218(d)(1)(i). Petitioners claimed interested party status under section 771(9)(C) of the Act as U.S. producers of a domestic like product. We received a complete substantive response from petitioners within the 30-day deadline specified in 19 C.F.R. § 351.218(d)(3)(i). However, we did not receive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 C.F.R. § 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of the orders.

Scope of the Orders

The products covered by these orders are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connections; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/ butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of these orders are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to these orders are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the orders.

These sunset reviews cover imports from all manufacturers and exporters of flanges from India and Taiwan except Viraj Forgings, Ltd., for which the order on flanges from India was revoked.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005 (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision

Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendation in this public memorandum, which is on file in room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov, under the heading ''November 2005.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on flanges from India and Taiwan would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
India.	
Mukand, Ltd.	210.00
Sunstar Metals Ltd.	210.00
Bombay Forgings Pvt. Ltd.	210.00
Dynaforge Forgings India, Ltd.	210.00
Akai Impex Pvt., Ltd.	18.56
All Others	162.14
Taiwan.	
Enlin Steel Corporation	48.00
Ta Chen Stainless Pipe Co., Ltd.	48.00
Tay Precision Industries Co., Ltd.	48.00
All Others	48.00

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. § 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–6127 Filed 11–3–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–848)

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received timely requests to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC''). In accordance with 19 CFR 351.214(d), we are initiating reviews for Xuzhou Jinjiang Foodstuffs Co., Ltd. (''Xuzhou Jinjiang'') and Xiping Opeck Food Co., Ltd. (''Xiping Opeck'').[1]

EFFECTIVE DATE: November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen Berlinguette or Scott Fullerton, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3740 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Xuzhou Jinjiang (September 30, 2005) and Xiping Opeck (September 21, 2005), pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC. *See Notice of Amendment to Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997).

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), in their requests for review, Xuzhou Jinjiang and Xiping Opeck certified that they did not export the subject merchandise to the United States during the period of investigation (POI) and that since the initiation of the investigation they have never been affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Xuzhou Jinjiang and Xiping Opeck further certified that their export activities are not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), both Xuzhou Jinjiang and Xiping Opeck, respectively, submitted documentation establishing the following: (1) the date on which it first shipped subject merchandise for export to the United States and the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment, and in the case of Xuzhou Jinjiang, documentation of one subsequent shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

In addition, the Department conducted customs database queries to confirm that both Xuzhou Jinjiang's and Xiping Opeck's shipments of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties.

Initiation of Reviews

In accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Xuzhou Jinjiang and Xiping Opeck. *See* Memoranda to the File through James C. Doyle, New Shipper Initiation Checklists, dated October 31, 2005. We intend to issue the preliminary results of this review not later than 180 days after the date on which this review was initiated, and the final results of this review within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the period of review (''POR'') for a new shipper review, initiated in the month immediately following the annual anniversary month, will be the one year period immediately preceding the annual anniversary month. Therefore, the POR for the new shipper reviews of Xuzhou Jinjiang and Xiping Opeck will be September 1, 2004, through August 31, 2005.

It is the Department's usual practice in cases involving non–market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of

[1] The Department received a timely request for an administrative review from Xuzhou Jinjiang on September 30, 2005. The Department notes that the periods of review for both this new shipper review and the above-referenced administrative review are identical. Because both of these requested reviews cover the same period of time (i.e., September 1, 2004, through August 31, 2005), the Department intends to revisit whether both reviews are statutorily required after the initiation of this new shipper review.

de jure and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Xuzhou Jinjiang and Xiping Opeck, including a separate rates section. The reviews will proceed if the responses provide sufficient indication that Xuzhou Jinjiang and Xiping Opeck are not subject to either *de jure* or *de facto* government control with respect to their exports of freshwater crawfish tail meat. However, if the exporter does not demonstrate the company's eligibility for a separate rate, then the company will be deemed not separate from the PRC–wide entity, which exported during the POI. An exporter unable to demonstrate the company's eligibility for a separate rate would hence not meet the requirements of CFR 351.214(b)(2)(i) and its new shipper review will be rescinded. *See, Notice of Preliminary Results of Antidumping Duty New Shipper Review and Rescission of New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 69 FR 53669 (September 2, 2004) and *Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581 (November 12, 1999).

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by either Xuzhou Jinjiang or Xiping Opeck. We will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries from these two exporters for which they are also the producers.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: October 31, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6128 Filed 11–3–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–351–604)

Final Results of Expedited Sunset Review: Brass Sheet and Strip from Brazil

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 order (''CVD'') on brass sheet and strip from Brazil 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 inadequate response from respondent interested parties (in this case, no response), the Department determined to conduct an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Goldberger, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1767 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 Brazil 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; the United Auto Workers (Local 2367 and Local 1024); and the 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 a complete substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of this CVD order.

Scope of the Order

The merchandise subject to this CVD order is coiled, wound–on-reels (traverse wound), and cut–to-length brass sheet and strip (not leaded or tinned) from Brazil. 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 Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 28, 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.

Final Results of Review

The Department determines that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. However, as a result of termination of all known countervailable programs, the Department is unable to determine the net countervailable subsidy likely to prevail.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–6129 Filed 11–3–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–122–815)

Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2005, the Department of Commerce (''the Department'') initiated sunset reviews of the countervailing duty (''CVD'') orders on pure magnesium and alloy magnesium from Canada pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested party and an inadequate response from respondent interested parties, the Department determined to conduct expedited sunset reviews of these CVD orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C). As a result of these sunset reviews, the Department finds that revocation of the CVD orders would likely lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Reviews'' section of this notice.

EFFECTIVE DATE: November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1174 or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department initiated sunset reviews of the CVD orders on pure magnesium and alloy magnesium from Canada pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). The Department received a notice of intent to participate from the domestic industry (US Magnesium LLC) and the Government of Quebec (''GOQ''), within the deadline specified in 19 CFR 351.218(d)(1)(i). US Magnesium LLC (''US Magnesium'') claimed interested party status under section 771(9)(C) of the Act, while the GOQ claimed interested party status under section 771(9)(B) of the Act.

The Department received complete substantive responses from US Magnesium and the GOQ on August 1, 2005, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On August 5, 2005, the Department extended the due date for parties to submit rebuttal comments to August 12, 2005. On August 12, 2005, US Magnesium and the GOQ filed rebuttal comments. On August 22, 2005, the Department, in its adequacy determination, stated that because a government response alone is not sufficient for full sunset reviews in which the orders are not[1] done on an aggregate basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), we are conducting expedited reviews of these CVD orders. *See* Memorandum from Susan Kuhbach to Barbara E. Tillman: Adequacy Determination: 2nd Sunset Review of the Countervailing Duty Orders on Pure Magnesium and Alloy Magnesium from Canada, dated August 22, 2005, which is on file in the Central Records Unit, Room B–099 of the main Department building.

Scope of the Orders

The products covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to the orders is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 31, 2005, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B–099 of the main Department 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.

Final Results of Reviews

We determine that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of a countervailable subsidy.

[1] The August 22, 2005, memo inadvertently omitted the word ''not'' which has been added to the phrase in this document.

With respect to the pure magnesium order, we are reporting a rate of 6.34 percent for ''all others'' and we have no basis for reporting a rate for NHCI. With respect to the alloy magnesium order, we are reporting a rate of 1.84 percent for Magnola, 8.18 percent for ''all others,'' and we have no basis for reporting a rate for NHCI.

Timminco, which was found to have an estimated net subsidy of zero in the original investigations, remains excluded from the orders. *See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992).

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–6126 Filed 11–3–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102805A]

Endangered Species; File No. 1553 and File No. 1555

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

ACTION: Notice; receipt of applications and modification request

SUMMARY: NMFS has received applications from the following entities for permits for scientific research on shortnose sturgeon (*Acipenser brevirostrum*):

Michael Mangold, U.S. Fish and Wildlife Service, Maryland Fishery Resources Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401 (File No. 1553); and

David J. Stier, Springfield Science Museum, 220 State Street, Springfield, MA 01103 (File No. 1555).

DATES: Written, telefaxed, or e-mail comments must be received on or before December 5, 2005.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following offices:

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; or

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9328; fax (978)281–9394.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: either File No. 1553, or File No. 1555.

FOR FURTHER INFORMATION CONTACT: For File No. 1555: Shane Guan or Kelsey Abbott, (301)713–2289.

For File No. 1553: Shane Guan or Layne Bolen, (301)713–2289;

SUPPLEMENTARY INFORMATION: The subject permits are requested 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 222–226).

File No. 1553: Mr. Michael Mangold of the U.S. Fish and Wildlife Service's (FWS's) Maryland Fishery Resources Office proposes to release up to 12 sterile shortnose sturgeon into the Potomac River in hopes that these fish would lead the researchers to location(s) where possible remnant wild fish aggregate. These fish would carry internal CART tags for tracking and would be released on May 1, 2006. The researchers plan to recapture the sterile fish on or around November 1, 2006. Sterile fish would be provided by FWS's Warm Springs Regional Fisheries Center in Georgia.

File No. 1555: Mr. David J. Stier, Director of Springfield Science Museum, proposes to obtain and use five captive-bred, non-releaseable juvenile shortnose sturgeon from the Silvio O. Conte Anadramous Fish Research Center in Turners Falls, MA. The proposed project to display endangered cultured shortnose sturgeon responds directly to a recommendation from the NMFS recovery plan outline for this species. This sturgeon display would be used to increase public awareness of the shortnose sturgeon and its status. The proposed project would educate the public on shortnose sturgeon life history and the reasons for the species decline. The permit is requested for a duration of 5 years.

Dated: October 28, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–22042 Filed 11–3–05; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of a Currently Approved Information Collection With Revisions; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the Corporation'') has submitted a 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, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Tim McManus, Director of Marketing at (202) 606–6723. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between the hours of 9 a.m. and 5 p.m. eastern standard time, Monday through Friday.

DATES: Written comments must be submitted to the individuals and offices

listed in the **ADDRESSES** section by December 5, 2005.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by either of the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Tim McManus, (202) 606–6723, or by email at *tmcmanus@cns.gov*.

SUPPLEMENTARY INFORMATION: 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 Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments: A 60-day **Federal Register** notice for Revision of Currently Approved Information Collection was published on July 28, 2005. The comment period ended on September 26, 2005. No comments were received.

Description: The AmeriCorps member application will gather data from applicants, including background information, educational history, skills and experience, and a motivational statement. AmeriCorps may use this information to evaluate their suitability for becoming a member and to place them in the most appropriate program(s) that match their skills and interests. The application has a few changes from the previously approved application, and if approved, the Corporation will continue to allow applicants to complete one application to be considered for multiple programs within AmeriCorps. This new application will continue to be cost-effective for the government by providing a centralized information source and streamlined process for receiving applications and placing them into the proper programs. Therefore, the Corporation seeks approval of its new AmeriCorps Application for membership.

Type of Review: Renewal with Revisions.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application for Membership.

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Those individuals interested in applying to become a member of any of the AmeriCorps programs, including AmeriCorps*NCCC and AmeriCorps*VISTA and the state and local programs located throughout the country that recruit AmeriCorps members.

Total Respondents: 225,000.

Frequency: One time.

Average Time Per Response: 75 minutes.

Estimated Total Burden Hours: 281,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: October 28, 2005.

Tim McManus,

Director of Marketing.

[FR Doc. 05–22023 Filed 11–3–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–06]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–06 with attached transmittal and policy justification.

Dated: October 31, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

3 OCT 2005

In reply refer to:
I-05/008133

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-06, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $760 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 06-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Saudi Arabia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$760 million
TOTAL	$760 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** continuation of support for F-5, F-15, RF-5, E-3, RE-3, KE-3, and C-130, aircraft; F-100-PW-220/229, J-85, T-56, and CFM-56 aircraft engines; and A/TGM-65 AIM-7 and AIM-9 missiles which have already been delivered to and are being operated by Saudi Arabia; contractor services; maintenance; spare and repair parts; support and test equipment; goggles; communication support; precision measuring equipment; personnel training; training equipment; technical support; and contractor engineering; and other related elements of program support.

(iv) **Military Department:** Air Force (QDE)

(v) **Prior Related Cases, if any:**

FMS Case KBI	- $77 million	- 10May00
FMS Case KCY	- $72 million	- 5May99

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 3 OCT 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia – Contractor, Technical Services, and Logistics Support

The Government of Saudi Arabia has requested a possible sale for the continuation of support for F-5, F-15, RF-5, E-3, RE-3, KE-3, and C-130, aircraft; F-100-PW-220/229, J-85, T-56, and CFM-56 aircraft engines; and A/TGM-65 AIM-7 and AIM-9 missiles which have already been delivered to and are being operated by Saudi Arabia; contractor services; maintenance; spare and repair parts; support and test equipment; goggles; communication support; precision measuring equipment; personnel training; training equipment; technical support; and contractor engineering; and other related elements of program support. The estimated cost is $760 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The missile support on this proposed sale is only for repair or maintenance of missiles already delivered to and being operated by Saudi Arabia. They need this maintenance support in order to ensure the combat and operational readiness of U.S.-origin military equipment. The Royal Saudi Air Force will use these support services for the day-to-day operation and maintenance of all their aircraft.

These contractor maintenance and training technical services will not alter the basic military balance in the region.

Many contractors provide organizational and intermediate level maintenance and training services to Saudi. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–21987 Filed 11–3–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–05]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–05 with attached transmittal and policy justification.

Dated: October 31, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

3 OCT 2005
In reply refer to:
I-05/004717

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-05, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $918 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 06-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Saudi Arabia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$716 million
Other	$202 million
TOTAL	$918 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** for the continuation of the United States supported effort to modernize the Saudi Arabian National Guard (SANG) by providing Major Defense Equipment (MDE) and non-MDE items:

See Policy Justification for a complete list of items.

(iv) **Military Department:** Army (ZAC, Amendment 33)

(v) **Prior Related Cases, if any:** numerous cases dating back to 1973.

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 3 OCT 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - Continued Assistance in the Modernization of the SANG

The Government of Saudi Arabia has requested a possible sale for the continuation of the United States supported effort to modernize the Saudi Arabian National Guard (SANG) by providing Major Defense Equipment (MDE) and non-MDE items:

Major Defense Equipment (MDE)

144 Armored Personnel Carriers Vehicles
12 Water Cannons Vehicles
52 Command and Control Vehicles
17 Ambulance and Evacuation Vehicles
36 Platoon Command Vehicles
55,500 40mm Ammunition
3,600 F-2000 5.56mm Assault Rifles with 40mm Grenade Launchers
51,400 F-2000 5.56mm Assault Rifles without 40mm Grenade Launchers
198 AN/VRC-90E SINCGARS Vehicular Single Long-Range Radio Systems

SANG has invited General Dynamics Land Systems, Australian Defense Industries, Steyr-Puch Pinzgauer (a subsidiary of General Dynamics Corporation), and BAE (Alvis) to present candidate systems, for the vehicles listed above, to the SANG for testing evaluation in Saudi Arabia. It is expected that the SANG source selection will be based on the results of this test and evaluation process.

Non-MDE Vehicles

104 ¼-ton trucks
6 pick-up trucks
16 patrol trucks
48 10-ton trucks
12 5-ton trucks w/winch
63 5-ton trucks
6 refrigeration trucks
16 11,000-gallon fuel tankers
8 9,000-gallon water tankers
8 16,500-gallon water tankers
6 executive automobiles
8 26-passenger buses
24 60-passenger buses
6 tire demounter trucks
9 25-ton wreckers
6 mobile workshop trucks
6 mobile lubrication trucks
4 5-ton dump trucks
11 mobile command trucks

Note: All U. S. standard commercial/non-tactical vehicles or other commercial equivalents.

Non-MDE

172 Harris Corporation RF-5000v 125W High Frequency (HF) or Current Production Version Commercial HF Radios
180 M24 7.62 Sniper Weapon System (scope is integrated) or commercial equivalent
265 Motorola Commercial Very HF Single or Multi-Channel Handheld Radios or other commercial equivalents
323 12 Gauge Shotguns or commercial equivalent
Ballistic Protection
Batons
Battery Chargers
Contractor engineering and technical support
Generators
Personnel training
Protective Clothing and Equipment
Publications
Shop Equipment
Spare and repair parts
Sets, Kits, and Outfits (assemblages of components in a container (pouch, box, chest, van, trailer, or shelter) primarily designed to accomplish a specific mission)
Sights and Scopes (the scope is for the M24 Sniper Weapon System which is an integral component of the weapon system)
Standard simulations and training systems to include: Multiple Integrated Laser Emitting System, Engagement Skills Trainer for marksmanship training, and the Battle Staff Automated Training System
Support Equipment to include Mobile Workshops
Training devices
Training equipment
Other related elements of program support

The estimated cost is $918 million.

The proposed sale coupled with the training, assistance, and advice provided by the U.S. Government through the Office of the Program Manager SANG will serve to make a key regional ally and partner in the Global War on Terror more capable of defeating those who would threaten regional stability and less reliant on the deployment of U.S. combat forces to maintain or restore stability in the Middle East.

The SANG needs these defense articles so that it can effectively conduct security and counter-terrorism operations. The continuation of services under the SANG Modernization Program is an evolution of the SANG as an effective defensive force with the advice, assistance, and training of the U.S. Army. The Modernization Program ensures necessary training, logistics, support, doctrine development and force integration for the continuing expansion and use of their weapon systems. These services will remain the cornerstone of an effort to upgrade and enhance the infrastructure of the SANG organization.

The proposed sale will also provide SANG with additional command, control, and communications equipment needed to operate in a secure communications environment that will facilitate the performance of its mission within Saudi Arabia. It is consistent with the National Command Authority's intent for stability in the Central Command Area of Operation. The radios will modernize equipment and provide the critical VHF and HF links necessary for a large fast moving force and integration with the SINCGAR radios SANG already has fielded in its Light Armored Vehicle and Light Infantry Brigades.

The proposed sale of this equipment and support will not affect the basic military balance in the region. Saudi Arabia is capable of absorbing and maintaining this additional MDE equipment in its inventory.

The principle contractors will be:

Fabrique Nationale Herstal, USA	**McLean, Virginia**
ITT Aerospace/Communications	**Fort Wayne, Indiana**
Harris Corporation	**Rochester, New York**
Motorola Corporation	**Schaumburg, Illinois**

There are no known offset agreements proposed in connection with this potential sale.

At present, there are approximately 219 U.S. Government personnel and 541 contractor representatives in country supporting the SANG modernization program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–22027 Filed 11–3–05; 8:45am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–04]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–04 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 31, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

3 OCT 2005
In reply refer to:
I-05/001703

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-04, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $401 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 06-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Saudi Arabia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 92 million
Other	$309 million
TOTAL	$401 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 165 Link 16 Multifunctional Information Distribution System/Low Volume Terminals (Fighter Data Link terminals), 25 Joint Tactical Information Distribution System terminals, installation, testing, spare and repair parts, support equipment, personnel training, training equipment, contractor engineering and technical support, and other related elements of program support.

(iv) **Military Department:** Air Force (QAB)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 3 OCT 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - Multifunctional Information Distribution System/Low Volume Terminals

The Government of Saudi Arabia has requested a possible sale of 165 Link 16 Multifunctional Information Distribution System (MIDS)/Low Volume Terminals (Fighter Data Link terminals), 25 Joint Tactical Information Distribution System (JTIDS) terminals, installation, testing, spare and repair parts, support equipment, personnel training, training equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $401 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The MIDS terminals will increase pilot operational effectiveness by at-a-glance portrayal of targets, threats, and friendly forces on an easy-to-understand relative position display. This proposed system will increase combat effectiveness while reducing the threat of friendly fire. The system will increase benefits of joint training exercises and foster interoperability with the U.S Air Force and other countries. Combined with AWACS and ground Command and Control, MIDS/JTIDS will provide allied forces greater situational awareness in any coalition operation.

The proposed sale of this equipment and support will not affect the basic military balance in the region. Saudi Arabia is capable of absorbing and maintaining these additional MIDS/JTIDS terminals in its inventory.

The prime contractor will be Data Link Solutions of Wayne, New Jersey. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 10 each U.S. Government and contractor representatives for one-week intervals annually to participate in training, program management and technical review. There will be up to 12 contractor representatives in Saudi Arabia to provide technical assistance on a permanent basis.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Classified Annex Item No. vii

(vii) Sensitivity of Technology:

1. The Multifunctional Information Distribution System (MIDS)/Low Volume Terminals Fighter Data Link (FDL) COMSEC device provides improved situational awareness and sensor cueing in support of air superiority and interdiction missions. The FDL provides Link 16 data link networking with other Link 16 capable aircraft, command, and control systems. The FDL shares a number of components with the MIDS terminal.

2. The MIDS terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

3. The advanced tactical data link system contains sensitive state-of-the-art technology. Some of the hardware (Joint Tactical Information Distribution System and other "Link-16 Like" terminals), publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminals, installed systems and related software.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–22028 Filed 11–3–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 3, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 1, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension of a currently approved collection.

Title: Lender's Application Process (LAP) (JS).

Frequency: On occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary). Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 9.

Abstract: The Lender's Application Process is submitted by lenders who are eligible for reimbursement of interest and special allowance, as well Federal Insured Student Loan (FISL) claims payment, under the Federal Family Education Loan Program. The information will be used by ED to update Lender Identification Numbers (LID's) lenders names, addresses with 9 digit zip codes and other pertinent information.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 02916. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–22011 Filed 11–3–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Management; Senior Executive Performance Review Board; Membership

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ended September 30, 2005. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education for 2005 is composed of career senior executives, noncareer senior executives, and Presidential appointees.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education to serve on the PRB of the Department of Education for the specified SES performance cycle: Chair: Michell Clark, Robin Gilchrist, John Higgins, Cheryl Oldham, Kent Talbert, Margo Anderson, Dennis Berry, Harry Feely, Patricia Guard, Danny Harris, Gary Hopkins, Jeanette Lim, Philip Link, Andrew Pepin, Thomas Skelly, Ricky Takai, and Veronica Trietsch. Alternates include: Sue Betka, Susan Bowers, and John McGrath.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Team, Human Resources Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2E124, FOB–6, Washington, DC 20202–4573. Telephone: (202) 401–2548.

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 under **FOR FURTHER INFORMATION CONTACT.**

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: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 1, 2005.

Margaret Spellings,

Secretary of Education.

[FR Doc. 05–22059 Filed 11–3–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–10–000]

Dominion Transmission, Inc.; Notice of Application

October 28, 2005.

Take notice that on October 24, 2005, Dominion Transmission, Inc., (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Commission an application, pursuant to section 7(b) of the Natural Gas Act, for authorization to reclassify from jurisdictional transmission to gathering, exempt from the Commission's jurisdiction under section 1(b) of the NGA: (1) Approximately two 500 horsepower compressor units at its Hastings compressor station; and (2) 218 feet of 12-inch diameter pipe on Line H–1 and five feet of 12-inch diameter pipe on Line H–10, all in Wetzel County, West Virginia, as more fully set forth in the application which is open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Margaret H. Peters, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219, or via telephone at (804) 819–2277, facsimile number (804) 819–2183, and e-mail: *margaret_h_peters@dom.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: November 17, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6113 Filed 11–3–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM05–4–000 and RM05–4–001]

Interconnection for Wind Energy; Notice Extending Compliance Date

October 28, 2005.

On June 2, 2005, the Commission issued its Final Rule in these proceedings. Interconnection for Wind Energy, Order No. 661, 70 FR 34993 (June 16, 2005), FERC Stats. & Regs. ¶ 31,186 (2005) (Final Rule). By order dated August 5, 2005, the Commission extended to November 14, 2005 the date by which public utilities that own, control, or operate transmission facilities in interstate commerce are to adopt the Final Rule Appendix G as amendments to the Large Generator Interconnection Procedures and Large Generator Interconnection Agreements in their Open Access Transmission Tariffs.

By this notice, the Commission hereby extends to December 30, 2005 the date by which public utilities that own, control, or operate transmission facilities in interstate commerce are to adopt the Final Rule Appendix G as amendments to the Large Generator Interconnection Procedures and Large Generator Interconnection Agreements in their Open Access Transmission Tariffs.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6112 Filed 11–3–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–16–000, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Filings

October 27, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. San Diego Gas & Electric Company and Palomar Energy, LLC

[Docket No. EC06–16–000]

Take notice that on October 25, 2005, San Diego Gas & Electric Company (SDG&E) and Palomar Energy, LLC (Palomar) (collectively, Applicants) filed with the Commission a joint

application pursuant to section 203 of the Federal Power Act and section 1289 of the Energy Policy Act of 2005 for Commission approval of the transfer of interests in jurisdictional facilities. The transaction involves the sale by Palomar to SDG&E of a nominally rated 555 MW electric generating facility located in Escondido, California, which is interconnected with SDG&E's transmission system operated by the California Independent System Operator Corporation.

Comment Date: 5 p.m. Eastern Time on November 15, 2005.

2. Blue Spruce Energy Center, LLC

[Docket No. EG06–3–000]

Take notice that on October 18, 2005, Blue Spruce Energy Center, LLC (Blue Spruce), filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Blue Spruce states that it previously obtained an exempt wholesale generator determination for its electric generating facility located at Aurora, Colorado. Blue Spruce states that it seeks a new determination that it will remain an exempt wholesale generator following expansion of the facility and other material changes.

Blue Spruce further states that copies of the application were served upon the United States Securities and Exchange Commission and Colorado Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on November 8, 2005.

3. Pacific Gas and Electric Company

[Docket No. EL06–11–000]

Take notice that on October 24, 2005, Pacific Gas and Electric Company (PG&E) petitioned the Commission to initiate a proceeding for review of the Final Award and Decision that issued September 30, 2005, in an arbitration that took place pursuant to the California Independent System Operator Corporation's tariff.

Comment Date: 5 p.m. Eastern Time on November 14, 2005.

4. Pedricktown Cogeneration Company LP

[Docket Nos. ER02–2001–000, ER03–256–000]

Take notice that on September 9, 2005, Pedricktown Cogeneration Company LP filed a request for limited waiver of Order No. 200, Electric Quarterly Reports Requirements.

Comment Date: 5 p.m. Eastern Time on November 17, 2005.

5. Cinergy Marketing & Trading, LP

[Docket No. ER05–1369–001]

Take notice that on October 24, 2005, Cinergy Services Inc., hereby submits a Supplemental Affidavit of William H. Hieronymus and associated exhibits and workpapers.

Comment Date: 5 p.m. Eastern Time on November 7, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6110 Filed 11–3–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–11–000, et al.]

Liberty Electric Power, LLC, et al.; Electric Rate and Corporate Filings

October 26, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Liberty Electric Power, LLC

[Docket No. EC06–11–000, ER01–2398–011]

Take notice that on October 21, 2005, Liberty Electric Power, LLC (Applicant) pursuant to section 203 of the Federal Power Act and part 33 of the Commission' regulations requests prior authorization for the indirect disposition of jurisdictional facilities that will result from transfers of equity interests in Applicant's indirect upstream owner, LEP Holdings, LLC and gives notice of the change in status that will result from the transactions in accordance with the requirements set forth in Order No. 652.

Comment Date: 5 p.m. Eastern Time on November 14, 2005.

2. Orion Power Holdings, Inc., Astoriz Generating Company, L.P., and Astoria Generating Company Acquisitions, L.L.C.

[Docket No. EC06–12–000]

Take notice that on October 21, 2005, Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, L.L.C., (collectively, Applicants), tendered for filing with the Commission, pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations, an application for authorization that would allow Astoria Generating Company Acquisitions, L.L.C. to acquire ownership interests in Astoria Generating Company, L.P. Pursuant to 18 CFR § 33.9 (2005), the Applicants seek privileged treatment for Exhibits D and I to the application.

Comment Date: 5 p.m. Eastern Time on November 14, 2005.

3. Select Energy, Inc. and Constellation Energy Commodities Group, Inc.

[Docket No. EC06–13–000]

Take notice that on October 24, 2005, Select Energy, Inc., (Select) and Constellation Energy Commodities Group, Inc. (collectively, Applicants) filed a joint application pursuant to section 203 of the Federal Power Act for

disposition of certain wholesale power sales contracts of Select.

Comment Date: 5 p.m. Eastern Time on November 14, 2005.

4. NRG Energy, Inc. and Texas Genco LLC

[Docket No. EC06–14–000]

Take notice that on October 24, 2005, NRG Energy, Inc., on behalf of itself and its public utility subsidiaries (collectively, NRG) and Texas Genco LLC (Texas Genco) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby the owners of Texas Genco would acquire certain amounts of NRG common stock as part consideration in exchange for the transfer of their interest in Texas Genco to NRG. The Applicants request confidential treatment of certain contracts and written instruments pursuant to which the transaction would be consummated.

Comment Date: 5 p.m. Eastern Time on November 23, 2005.

5. Entegra Power Group LLC, Gila River Power, L.P. and Union Power Partners, L.P.

[Docket No. EC06–15–000]

Take notice that on October 24, 2005, Entegra Power Group LLC, (Entegra), on behalf of itself and its wholly-owned subsidiaries Gila River Power, L.P. and Union Power Partners, L.P. (together with Entegra, Applicants), and on behalf of the current owners of equity interests in Entegra, filed with the Commission an application pursuant to section 203 of the Federal Power Act, requesting authorization for an indirect disposition of FERC-jurisdictional facilities resulting from certain proposed transfers of ownership of equity interests in Entegra.

Comment Date: 5 p.m. Eastern Time on November 15, 2005.

6. Boston Edison Company

[Docket no. EL02–123–008]

Take notice that on October 17, 2005, Boston Edison Company submitted for filing, pursuant to the Commission's Order issued September 15, 2005, changes with respect to the service agreements for the Town of Wellesley and the Town of Concord.

Comment Date: 5 p.m. Eastern Time on November 16, 2005.

7. Luzenac America, Inc.

[Docket No. EL06–8–000]

Take notice that on October 20, 2005, Luzenac America, Inc. (Luzenac), pursuant to section 1290 of the Energy Policy Act of 2005 and Rules 206 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, filed a Petition for Relief relating to a termination payment sought by Enron Power Marketing, Inc. (Enron). In the Petition, Luzenac requests an expeditious determination by FERC that the termination payment sought by Enron from Luzenac is not permitted under Enron's rate schedule or its contract with Luzenac entered into under such rate schedule, or is otherwise unlawful on the grounds that the contract is unjust and unreasonable or contrary to the public interest.

Comment Date: 5 p.m. Eastern Time on November 10, 2005.

8. Midwest Renewable Energy Projects LLC

[Docket No. EL06–9–000]

Take notice that on October 20, 2005, Midwest Renewable Energy Projects LLC submitted to the Commission a petition to for declaratory order regarding the recent amendments to the Public Utility Regulatory Policies Act of 1978.

Comment Date: 5 p.m. Eastern Time on November 10, 2005.

9. Devon Power LLC

[Docket No. ER04–23–014]

Take notice that on October 11, 2005, Devon Power LLC, Middletown Power LLC and Montville Power LLC (collectively, the NRG Companies), pursuant to a deficiency letter issued on July 13, 2005 submitted for filing a reconciliation of their annual informational filing.

Comment Date: 5 p.m. Eastern Time on November 7, 2005.

10. The Detroit Edison Company

[Docket No. TS06–1–000]

Take notice that on October 3, 2005, The Detroit Edison Company (Detroit Edison) filed a request for clarification that it should not be considered a transmission provider subject to the Standards of Conduct promulgated in Order No. 2004. Detroit Edison requests full waiver from the requirements of Order No. 2004, FERC Statutes and Regulations ¶31,355 (2003).

Comment Date: 5 p.m. Eastern Time on November 10, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6111 Filed 11–3–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–130–000; CP05–132–000; CP05–131–000; Corps Application # CENAB–OP–RMS200565510–4]

U.S. Army Corps of Engineers, Baltimore District; Dominion Cove Point LNG, LP; Dominion Transmission, Inc; Notice of Availability of the Draft Environmental Impact Statement, Draft General Conformity Determination, and U.S. Army Corps Of Engineers Public Notice for the Proposed Cove Point Expansion Project

October 28, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) in cooperation with the U.S. Army Corps of Engineers (Corps) and U.S. Coast Guard, (Coast Guard) has prepared a draft Environmental Impact

Statement (EIS) for a liquefied natural gas (LNG) import terminal expansion and natural gas pipeline facilities proposed by Dominion Cove Point LNG, L.P. and Dominion Transmission, Inc. (collectively referred to as Dominion) in the above-referenced dockets. The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The draft EIS addresses federally listed species, cultural resources, and essential fish habitat issues. A draft General Conformity Determination was also prepared by the FERC to assess the potential air quality impacts associated with construction and operation of the proposed project and is included as Appendix H of the draft EIS.

The FERC staff concludes that approval of the proposed project with appropriate mitigating measures, as recommended, would have limited adverse environmental impact.

This is a joint public notice by the FERC and Corps to advertise:

- The availability of the draft EIS;
- The scheduling of the joint FERC public meetings/Corps public hearings on December 7 and 8th, 2005; and
- The submission of a Department of the Army permit application CENAB–OP–RMS (Dominion Cove Point LNG, LP) 200565510–4.

The draft EIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas (steel) pipeline facilities:

- Two new 160,000 cubic meter single containment LNG storage tanks;
- Additional vaporization capacity consisting of shell and tube vaporizers and associated equipment;
- Additional power generation equipment consisting of two 21.7 megawatt gas turbine generators and three emergency generators;
- Infrastructure associated with the LNG terminal expansion including roads and storage and work areas at the existing site;
- About 47.8 miles of 36-inch-diameter, loop pipeline in Calvert, Prince Georges, and Charles County, Maryland (TL–532 Pipeline);
- Ancillary areas for pipeline construction, including access roads, staging areas, and work spaces;
- About 81 miles of 24-inch-diameter pipeline lateral in Juniata, Mifflin, Huntingdon, Centre, and Clinton Counties, Pennsylvania (PL–1 EXT2 Pipeline);
- Two new compressor stations in Juniata County (Perulack Station) and Centre County (Centre Relay Station), Pennsylvania;
- About 11 miles of 24-inch diameter pipeline loop in Wetzel County West Virginia and Greene County, Pennsylvania (TL–492 EXT3 Pipeline);
- About 12 miles of 24-inch-diameter pipeline loop in Potter County, Pennsylvania (TL–453 EXT1 Pipeline);
- About 10 miles of 20-inch-diameter pipeline loop in Potter County, Pennsylvania (TL–536 Pipeline);
- Replacement of about 0.6 mile and pressure testing and possible replacement of about 0.4 mile of 30-inch-diameter pipeline in Franklin County, Pennsylvania (PL–1 Pipeline Pressure Restoration Sites);
- Minor modifications to the existing Loudoun Measuring and Regulating (M&R) Station in Loudoun County, Virginia;
- About 5,000 hp of additional compression at the existing Mockingbird Hill Compressor Station in Wetzel County, West Virginia;
- Minor modifications to the existing Leesburg Compressor Station in Loudoun County, Virginia;
- Minor modifications to the existing Chambersburg Compressor Station in Franklin County, Pennsylvania;
- Additional facilities and pipeline replacement at the existing Leidy M&R Station located at the Leidy Hub complex in Clinton County, Pennsylvania;
- About 3,550 hp of additional compression at Dominion's previously approved but not yet constructed Wolf Run Compressor Station in Lewis County, West Virginia; and
- Minor modifications to Dominion's previously approved but not yet constructed Quinlan Compressor Station in Cattaraugus County, New York.

Dominion's proposed LNG terminal expansion would increase the send-out capability by 800,000 Dth/d and increase the storage capacity by 6.8 MMDth/d. Dominion's proposed pipeline and related facilities in Maryland and Virginia would allow it to deliver an additional 800,000 Dth/d from its LNG terminal to its connections with other interstate pipelines. Dominion's proposed pipelines and related facilities in Pennsylvania, West Virginia, and New York would allow it to transport an additional 700,000 Dth/d to various delivery points on its system, and offer a new underground storage service of 6.0 MMDth, with an additional demand of 100,000 Dth/d.

Dominion Cove Point LNG,LP has applied, concurrently, to the Corps for a Department of the Army Individual permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) for proposed structures in and under navigable waters and the discharge of dredged, excavated, and/or fill material into waters of the United States, including wetlands to construct the preferred alternative identified in the draft EIS. The decision whether to issue the permits will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed projects on the public interest. The decision will reflect the national concern for the protection and utilization of important resources. The benefits, which would be reasonably expected to accrue from the proposed projects, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposed work, will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply, and conservation, water quality, energy needs, safety, food and fiber production, consideration of property ownership, and in general, the needs and welfare of the people. The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of the proposed project. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for the proposal. To make this decision, the Corps uses comments received to access impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above.

The evaluation of the impact of the work described above on the public interest will also include application, by the Corps, of the guidelines [Section 404(b)(1)] promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act.

For Corps permitting purposes, if applicable, the applicant is required to obtain a Water Quality Certification in accordance with Section 401 of the Clean Water Act from the Maryland Department of the Environment (MDE), the Pennsylvania Department of Environmental Protection, and the State of West Virginia Division of Environmental Protection. The Section 401 certifying agencies have a statutory limit of one year in which to make their

decisions. Additionally, for Corps permitting purposes, the applicant is required to obtain Coastal Zone Management Consistency concurrence from the MDE, as well. It should be noted that the MDE has a statutory limit of 6 months in which to make its consistency determination.

Joint FERC Public Meetings/Corps Public Hearings are held to provide interested individuals with the opportunity to present information about the effects of the project, including its social, economic and environmental effects. These meetings/hearings provide the opportunity for interested parties to present views, opinions, and information that will be considered by the FERC and the Corps in evaluating the proposed project.

The U.S. Coast Guard (Coast Guard) within the U.S. Department of Homeland Security is also participating as a cooperating agency in the preparation of the EIS because it exercises regulatory authority over LNG facilities that affect the safety and security of port areas and navigable waterways under Executive Order 10173; the Magnuson Act (50 U.S.C. section 191); the Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221, *et seq.*); and the Maritime Transportation Security Act of 2002 (46 U.S.C. section 701). The Coast Guard also has authority for LNG facility plan review, approval and compliance verification as provided in Title 33 CFR part 105, and siting as it pertains to the management of vessel traffic in and around the LNG facility. As required by its regulations, the Coast Guard is responsible for issuing a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG marine traffic. The Coast Guard plans to adopt the EIS if it adequately covers the impacts associated with issuance of the LOR.

Comment Procedures and FERC Public Meetings/Corps Public Hearings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Reference Docket Nos. CP05–130–000, CP05–131–000, and CP05–132–000.
- Label one copy of the comments for the attention of the Gas Branch 1.
- Mail your comments so that they will be received in Washington, DC on or before December 21, 2005.

Please note that the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to create a free account, which can be created by clicking on ''Login to File'' and then ''New User Account.''

The Corps public hearings provide members of the public the opportunity to present views, opinions, and information which will be considered by the Corps in evaluating the Department of the Army permit. All comments received will become part of the formal project record.

Copies of any written statements expressing concern for aquatic resources may be submitted to: Mrs. Kathy Anderson, Corps of Engineers, CENAB–OP–RMS, P.O. Box 1715, Baltimore, Maryland 21203–1715.

The Corps public hearing comment period closes on December 21, 2005.

In addition to or in lieu of sending written comments, we invite you to attend one of the FERC public meetings/Corps public hearings we have scheduled as follows:

Wednesday, December 7, 2005: 7 p.m. (EST), Old Courthouse, 1 Market Street, Lewistown, PA 17044. (717) 248–6733.

Thursday, December 8, 2005: 7 p.m. (EST), Penn Stater Conference Center Hotel, 215 Innovation Boulevard, State College, PA 16803. (814) 863–5000.

Wednesday, December 7, 2005: 7 p.m. (EST), Holiday Inn—Solomons, 155 Holiday Drive, Solomons, MD 20688. (410) 326–6311.

Thursday, December 8, 2005: 7 p.m. (EST), Holiday Inn—Waldorf, U.S. 301 and St. Patrick's Drive, Waldorf, MD 20603. (301) 645–8200.

Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Hard-copies of the draft EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS or provided comments during scoping; libraries; newspapers; and parties to this proceeding. In the alternate, those persons or organizations who were identified as potential stakeholders on this environmental mailing list are receiving an Executive Summary document and a full version of the draft EIS on CD–ROM. A limited number of documents and CD–ROMs are available from the Public Reference Room identified above. In addition, hard-copies of the document are also available for reading at public libraries along the proposed project route.

To reduce printing and mailing costs the final EIS will be issued in both CD–ROM and hard-copy formats. In a separate mailing, the parties on the current mailing list for the draft EIS will be sent a postcard providing an opportunity for them to select which format of the final EIS they wish to receive. The FERC strongly encourages the use of the CD–ROM format in its publication of large documents. If you wish to receive a paper copy of the final EIS instead of a CD-ROM, you must return the postcard indicating that choice.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site Folialso provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

It is requested that you communicate the foregoing information concerning the proposed work to any persons known by you to be interested and not being known to this office, who did not receive a copy of this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6116 Filed 11–3–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1971–079.

c. *Date Filed:* July 21, 2003.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Hells Canyon Hydropower Project.

f. *Location:* On the Snake River in Washington and Adams, Counties, Idaho; and Wallowa and Baker Counties, Oregon. About 5,270 acres of Federal lands administered by the Forest Service and the Bureau of Land Management (Payette and Wallowa-Whitman National Forests and Hells Canyon National Recreational Area) are included within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert W. Stahman, Vice President, Secretary, and General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707.

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074, *alan.mitchnick@ferc.gov;* Emily Carter, (202) 502–6512, *emily.carter@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 90 days from the issuance of this notice; reply comments are due 135 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Hells Canyon Project consists of three developments: Brownlee Development consists of a 395-foot-high earth and rockfill dam, a 14,621-acre impoundment, and a powerhouse with five generating units producing 585.4 megawatts (MW); Oxbow Development consists of a 209-foot-high earth and rockfill dam, a 1,150-acre impoundment, and a powerhouse with four generating units producing 460 MW; and Hells Canyon Development consists of a 320-foot-high concrete gravity dam, a 2,412-acre impoundment, and a powerhouse with three generating units producing 391.5 MW. Idaho Power also operates four fish hatcheries and four adult fish traps.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6114 Filed 11–3–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–10–000, EY06–6–000]

Standards of Conduct for Transmission Providers; Florida Power & Light Company; Notice Granting Waiver of Posting and Recordkeeping Requirements

October 28, 2005.

On October 27, 2005, Florida Power & Light Company (FPL) filed to seek a temporary emergency waiver of section 358.4(a)(2) of the Commission's regulations and for any other waivers necessary for FPL to proceed with the restoration work on its transmission and distribution systems necessitated by

Hurricane Wilma. FPL requests that the waiver begin on October 25, 2005 and continue through November 30, 2005. Effective on the date of this notice, the Commission will grant FPL a waiver, until November 15, 2005, of the otherwise applicable requirements of section 358.4(a)(2) to record a log of emergency-related deviations from the Standards of Conduct and to post these deviations on its web site.

FPL explains that Hurricane Wilma was a Category 3 hurricane with hurricane force winds that cut a 180-mile swath across southern Florida and had tropical-force winds well beyond that. FPL states that about 60 percent of its 35-county territory was affected, covering nearly 22,000 square miles. FPL states, further, that its transmission lines and substations have been severely damaged. FPL notes that approximately 3.2 million of its 4.3 million customers were without power at the height of the damage. FPL estimates that it may take four to five weeks to restore power to all its customers. FPL explains that its restoration force totals over 6,000 employees, including out-of-state crews and contractors, in addition to FPL teams.

FPL states that the entire workforce of FPL Group is involved in these restoration efforts on FPL's transmission and distribution systems. FPL anticipates that, due to the magnitude of the task, it is likely that there will be numerous communications among employees concerning the status of the restoration and to coordinate joint operations and repair work. FPL explains that the requirement to report each deviation of the Standards of Conduct within twenty-four hours would create a monumental task that could slow its restoration efforts. FPL notes that the waiver request is limited to those employees involved in the Hurricane Wilma restoration effort and the communications required to carry out the restoration. FPL concludes, therefore, that good cause exists to grant it a waiver of this requirement.

The Commission has previously granted similar waivers due to Hurricane Katrina [1] and Hurricane Rita.[2] The waivers, among other things, allowed affected transmission providers to delay for a limited period of time compliance with the requirement of section 358.4(a)(2) of the Commission's regulations, 18 CFR 358.4(a)(2)(2005), to report to the Commission and post on the OASIS or Internet Web site, as applicable, each emergency that resulted in any deviation from the Standards of Conduct. In addition, due to the extreme nature of the emergency in each instance, the Commission also waived, for those limited periods, the requirements to record and retain a record of each deviation of the Standards of Conduct.[3]

The Commission grants FPL a waiver of the recording and posting requirements of section 358.4(a)(2) of the Commission's regulations in these emergency circumstances, effective on the date of this notice until November 15, 2005, without prejudice to FPL requesting a further extension, if necessary. The Commission directs FPL to ensure that the employees affected by this waiver observe the no-conduit prohibition in the Standards of Conduct, 18 CFR 358.5(b)(7) (2005).

Magalie R. Salas,

Secretary.

[FR Doc. E5–6115 Filed 11–3–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Notice Granting Extension of Time To Comply With Posting and Other Requirements, *Standards of Conduct for Transmission Providers,* Docket Nos. EY05–14–000, *et al.* (August 31, 2005); Notice Waiving Recordkeeping Requirements, *Standards of Conduct for Transmission Providers,* Docket Nos. EY05–14–001, *et al.* (September 7, 2005).

[2] Notice Granting Extension of Time To Comply With Posting and Other Requirements, *Standards of Conduct for Transmission Providers,* Docket Nos. EY05–20–000, *et al.* (September 23, 2005).

[3] *Supra* notes 1 and 2.

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0003; FRL–7994–1; Docket ID # OPPT–2005–0003]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c)); EPA ICR No. 1031.08, OMB No. 2070–0017

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c)); EPA ICR No. 1031.08, OMB No. 2070–0017. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before December 5, 2005.

ADDRESSES: Submit your comments, referencing docket ID Number OPPT–2005–0003, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 9, 2005, EPA sought comments on this renewal ICR (70 FR 6857), pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the Supporting Statement of the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPPT–2005–0003, which is available for public viewing at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

ICR Title: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c)).

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: TSCA section 8(c) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company.

Responses to the collection of information are mandatory (see 40 CFR 717). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The total annual public burden for this collection of information is estimated to be about 24,550 hours, with the burden ranging between 15 minutes and 8 hours per response depending upon the type(s) of activity that a respondent must complete. Burden is the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated No. of Respondents: 13,445.

Estimated Total Annual Burden on Respondents: 24,548 hours.

Estimated Total Annual Labor Costs: $1,232,417.

Changes in Burden Estimates: There is a decrease of 5,391 hours (from 29,939 hours to 24,548 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This decrease is an adjustment and is based on several factors that are described in detail in the ICR.

Dated: August 9, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–22033 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2005–0004, FRL–7993–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Focus Groups as Used by EPA for Economics Projects, EPA ICR Number 2205.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 3, 2006.

ADDRESSES: Submit your comments, referencing docket ID number OA–2005–0004, to EPA online using EDOCKET (our preferred method), by e-mail *oei.docket@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Office of Environmental Information, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Nathalie Simon, Office of Policy, Economics and Innovation, Mail Code 1809T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–566–2347; fax 202–566–2363; e-mail address: *simon.nathalie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OA–2005–0004, which is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information (OEI) Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Title: Focus Groups as used by EPA for Economics Projects.

Abstract: The Environmental Protection Agency (EPA) is seeking approval for a generic information collection request (ICR) for the conduct of focus groups and protocol interview (hereafter jointly referred to as focus groups) related to economics projects. Over the next three years, the Agency anticipates embarking on a number of survey development efforts associated with a variety of economics projects including those related to valuation of ecosystems, children's health risks, improvements to coastal waters, and invasive species to name a few. Focus groups are an important part of any survey development process, allowing for researchers to directly gauge what specific issues are important to the public and providing a means for explicitly testing draft survey materials. Through these focus groups, the Agency will be able to gain a more in-depth understanding of the public's attitudes, beliefs, motivations and feelings regarding specific issues and will provide valuable information regarding the quality of draft survey instruments.

The information collected in the focus groups will be used to develop and improve economics-related surveys. To the extent that these surveys are ultimately successfully administered, they will serve to expand the Agencies understanding of benefits and costs of a variety of actions and could provide the means to quantitatively assess the effects of others. Participation in the focus groups will be voluntary and the identity of the participants will be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The only burden imposed by the focus group interviews on respondents will be the time required to participate in the focus groups and answer the associated questions. The Agency estimates that for economics projects anticipated over the next three years, 1758 participants will be needed to participate in 188 focus groups. In most cases, the anticipated length of the focus groups is 2.0 hours per participant, with the average length per focus group equal to 2.4 hours. Based on an average hourly rate of $25.87 [a] (including employer costs of all employee benefits), the Agency expects that the average per-respondent cost for the focus groups will be $62.09 and the corresponding one-time total cost to all respondents will be $109,151 (see table below). Since this information collection is voluntary and does not involve any special equipment, respondents will not incur any capital or operation and maintenance (O&M) costs.

TABLE.—ESTIMATED BURDEN TO PARTICIPANTS

Office	Topics to include	Number of focus groups	Number of participants per focus group	Average length of focus group
(1)	(2)	(3)	(4)	(5)
Office of Policy Economics and Innovation ...	Valuation of Improvements to Coastal Water; Valuation of Children's Health Risk, Ecological Valuation, etc.	48	9	2
Office of Research and Development	Valuation of environmental improvements; ecosystem services, etc.	70	9	2.1

[a] Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, total compensation, March 2005 (*http://stats.bls.gov/news.release/ecec.t02.htm*).

TABLE.—ESTIMATED BURDEN TO PARTICIPANTS—Continued

Office	Topics to include	Number of focus groups	Number of participants per focus group	Average length of focus group
(1)	(2)	(3)	(4)	(5)
Office of Air and Radiation.				
Office of Radiation and Indoor Air	Environmental management of asthma; Indoor air quality management in schools and large buildings, etc.	6	20	4
Office of Transportation and Air Quality	Encouraging fuel efficiency through labeling (Smartway brand), etc.	4	9	2
Office of Water	Invasive species prevention; Great Lakes, etc.	60	9	3
Total		188	*1758	**2.4

Total needed for all focus groups [sum[col (3)(4)]].
**Average time for all focus groups [cols. (3)*(5)/188].

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 26, 2005.

Al McGartland,

Office Director, National Center for Environmental Economics, Office of Policy, Economics and Innovation.

[FR Doc. 05–22035 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6669–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050220, ERP No. D–FHW–L40227–WA, Interstate 90 Snoqualmie Pass East Project, Proposes to Improve a 15-mile Portion of I–90 from Milepost 55.10 in Hyak to Milepost 70.3 New Easton, Funding, U.S. Army COE Section 404 Permit and NPDES Permit, Kittitas County, WA.

Summary: EPA has environmental objections about the proposed project primarily related to the adequacy of the ecological connectivity options presented. EPA notes that no preferred alternative was selected and the most substantial environmental issues relate to the No Action Alternative and Ecological Connectivity Improvement Package C.

Rating EO2.

EIS No. 20050354, ERP No. D–UAF–E11057–00, Shaw Air Base Airspace Training Initiative (ATI), 20th Fighter Wing Proposal to Modify the Training Airspace Overlying Parts, South Carolina and Georgia

Summary: EPA expressed concern about airspace management/configuration/access around existing civilian airports in Georgia and ongoing coordination with the public regarding noise issues. Mitigation of some of the specific impacts can be accomplished via structuring the various training scenarios and modifying the proposed airspace to further avoid/minimize impacts around civilian airports.

Rating EC1.

EIS No. 20050368, ERP No. D–IBR–G28013–NM, Carlsbad Project Water Operations and Water Supply Conservation, Changes in Carlsbad Project Operations and Implementation of Water Acquisition Program, U.S. COE Section 404 Permit, NPDES, Eddy, De Baca, Chaves, and Guadelupe Counties, NM.

Summary: EPA had no objection to the selection of the preferred action.

Rating LO.

Final EISs

EIS No. 20050344, ERP No. F–NRC–F06025–WI, Generic—License Renewal for Point Beach Nuclear Plant, Units 1 and 2, Supplement 23 to NUREG–1437 (TAC Nos. MC2049 and MC2050), Lake Michigan, Manitowoc County, WI.

Summary: EPA continues to express concerns about the adequacy and clarity of the radiological impact assessments and risk estimates.

EIS No. 20050373, ERP No. F–COE–H39012–MO, Howard Bend Floodplain Area Study, Improvements for Future Land, Future Road, and Stormwater Management, Missouri River Flood Developments, U.S. Army COE Section 10 and 404 Permits, St. Louis County, MO.

Summary: EPA continued to express concerns about the cumulative effects analysis, including uncertainty over the potential for development within the levee-protected area and the reliance on potentially outdated FEMA profiles that may underestimate impacts.

EIS No. 20050376, ERP No. F–COE–G32057–TX, CedarBayou Navigation Chanel (CBNC) Improvement Project, Implementation, Near Baytown in Harris and Chambers Counties, TX.

Summary: No comment letter was sent to the preparing agency.

EIS No. 20050419, ERP No. F–AFS–J65441–MT, Middle East Fork Hazardous Fuel Reduction Project, Implementation of Three Alternatives, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT.

Summary: EPA continues to express concerns about potential impacts to water quality. EPA stressed the importance of designing and implementing fuels reduction treatments and road access in a manner that minimizes impacts. EPA also recommended modification of mitigation measures to further assure protection for large old growth Ponderosa pine trees.

Dated: November 1, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–22041 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6668–09]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed October 24, 2005 Through October 28, 2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050450, Draft EIS, SFW, IL, Crab Orchard National Wildlife Refuge Comprehensive Conservation Plan (CCP), Implementation, Williamson, Jackson and Unicon Counties, IL, Comment Period Ends: January 17, 2006, Contact: Dan Frisk 618–997–3344.

EIS No. 20050451, Final EIS, AFS, WA, Fish Passage and Aquatic Habitat Restoration at Hemlock Dam, Implementation, Gifford Pinchot National Forest, Mount Adams District, Skamaria County, WA, Wait Period Ends: December 5, 2005, Contact: Benet Coffin 509–395–3425.

EIS No. 20050452, Draft EIS, BLM, NM, Kasha-Katuwe Tent Rocks National Monument Resource Management Plan, Implementation, Rio Puerco Field Office, Sandoval County, NM, Comment Period Ends: February 2, 2006, Contact: John Bristol 505–761–8755.

EIS No. 20050453, Draft EIS, AFS, ID, South Fork Salmon River Subbasin Noxious and Invasive Weed Management Program, Implementation, Krassel and McCall Ranger Districts, Payette National Forest and Cascade Ranger District, Valley and Idaho Counties, ID, Comment Period Ends: December 20, 2005, Contact: Ana Egnew 208–634–0624.

EIS No. 20050454, Final EIS, FRC, 00, Cove Point Expansion Project, Construction and Operation of a Liquefied Natural Gas (LNG) Import Terminal Expansion and Natural Gas Pipeline Facilities, US. Army COE Section 404 Permit, Docket Nos. CPO5–130–000, CP05–131–000 and CP05–132–00, PA, VA, WV, NY and MD, Wait Period Ends: December 21, 2005, Contact: Thomas Russo 1–866–208–3372.

EIS No. 20050455, Final EIS, AFS, IN, German Ridge Restoration Project, To Restore Native Hardwood Communities, Implementation, Hoosier National Forest, Tell City Ranger District, Perry County, IN, Wait Period Ends: December 5, 2005, Contact: Ron Ellis 812–275–5987.

EIS No. 20050456, Final EIS, FHW, 00, US 24 Transportation Improvements Project, I–469 in New Haven, Indiana to Ohio Route15 in Defiance, Funding, NPDES Permit and U.S. Army COE Section 404 Permit Issuance, Westenmost and Allen Counties, IN and Paulding and Defiance Counties, OH, Wait Period Ends: December 5, 2005, Contact: Mark Vonder Embse 614–280–6854.

Amended Notices

EIS No. 20050437, Final EIS, AFS, NM, Tajique Watershed Restoration Project, Proposes Fuel Reduction and Restore Forest Health, Cibola National Forest, Torrance County, NM, Wait Period Ends: November 21, 2005, Contact: Vicky Estrada 505–847–2990.

Revision of FR Notice Published October 21, 2005: Correction to Title and Contact Person Name.

EIS No. 20050446, Draft EIS, USN, 00, Undersea Warfare Training Range (USWTR), Installation and Operation, Preferred Site (in the Cherry Point Operating Area) and the Alternate Sites (within the Virginia Capes and Jacksonville Operating Areas), NC, VA and FL, Comment Period Ends: December 28, 2005, Contact: Keith Jenkins 757–322–4046.

Revision of FR Notice Published on October 28, 2005: Comment Period Extended from December 12, 2005 to December 28, 2005.

Dated: November 1, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–22040 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7994–2]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Lyondell Chemical Company

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on No Migration Petition Reissuance.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Lyondell Industries, Inc. (Lyondell) for two Class I injection wells located at Channelview, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Lyondell, of the specific restricted hazardous wastes identified in the exemption, into Class I hazardous waste injection wells WDW–148 and WDW–162, until December 31, 2020, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued August 18, 2005. The public comment period closed on October 3, 2005. No comments were received. This decision constitutes final Agency action.

DATES: This action is effective as of October 28, 2005.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/

UIC Section, EPA—Region 6, telephone (214) 665–7165.

Larry Wright,

Acting Director, Water Quality Protection Division (6WQ).

[FR Doc. 05–22032 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7993–9]

National Drinking Water Advisory Council's Working Group on Public Education Requirements of the Lead and Copper Rule Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the second public meeting of the Working Group of the National Drinking Water Advisory Council (NDWAC) on the Public Education Requirements of the Lead and Copper Rule (WGPE). The purpose of this meeting is to provide an opportunity for the WGPE members to continue discussions on the public education requirements of the Lead and Copper Rule.

DATES: The second meeting of the WGPE will be held in Washington, DC, on December 15, 2005, from 8:30 a.m. to 5 p.m. and December 16, 2005, from 8 a.m. to 3 p.m.

ADDRESSES: The WGPE meeting will take place at RESOLVE, Inc., 1255 23rd St., NW., Suite 275, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Elizabeth McDermott, Designated Federal Officer, National Drinking Water Advisory Council Working Group on Public Education, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Drinking Water Protection Division (Mail Code 4606M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Please contact Elizabeth McDermott at *mcdermott.elizabeth@epa.gov,* or call 202–564–1603 to receive additional details.

SUPPLEMENTARY INFORMATION:

Background: The charge for the Working Group on the Public Education Requirements of the Lead and Copper Rule (WGPE) is to (1) Review the current public education requirements on lead in drinking water to find and define the need for improvements and make recommendations to the full NDWAC accordingly; (2) develop language for communicating the risk of lead in drinking water and a suggested response to the public; and (3) define the delivery means to the public. The NDWAC established a target date of May 2006 to complete these tasks. The WGPE is comprised of 16 members from drinking water industries, stakeholder organizations, state and local officials, public health officials, environmental organizations, and risk communication experts.

Public Comment: An opportunity for public comment will be provided during the WGPE meeting. 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. Written comments may be provided at the meeting or may be sent by mail to Elizabeth McDermott, Designated Federal Officer for the WGPE, at the mail or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Special Accommodations: Any person needing special accommodations at this meeting, including wheelchair access, should contact Elizabeth McDermott, Designated Federal Officer for the WGPE, at the number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the WGPE meeting.

Dated: October 31, 2005.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 05–22034 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0288; FRL–7744–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective on December 5, 2005, unless the Agency receives a written withdrawal request on or before December 5, 2005. The Agency will consider withdrawal requests postmarked no later than December 5, 2005.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before December 5, 2005.

ADDRESSES: Written withdrawal requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket identification (ID) number OPP–2005–0288. in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *Jamula.John@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0288. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Written Withdrawal Requests?

1. *Electronically*—i. *E-mail.* E-mail your written withdrawal requests to: John Jamula at *jamula.john@epa.gov*, Attention: Docket ID Number OPP–2005–0288.

ii. *Disk or CD ROM.* Written withdrawal requests on disk or CD ROM may be mailed to the address in Unit I.C.2. or delivered by hand or courier to the address in Unit I.C.3., Attention: Docket ID Number OPP–2005–0288. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your written withdrawal requests to: John Jamula, Information Technology and Resource Management (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0288.

3. *By hand delivery or courier.* Deliver your written withdrawal requests to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0288. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by EPA registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDES

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
000004–00415	Bonide Sevin 4F Agricultural Insecticide	Carbaryl	Poultry
000070–00165	Kill-Ko 10% Sevin Brand Carbaryl Insecticide Dust	Carbaryl	Poultry
000100–00864	Sentinel 40 WG	Cyproconazole	Turf Uses
000100–01061	Reglone Dessicant	Diquat Dibromide	Gran sorghum and Soybean
000228–00068	Riverdale Malathion 5	Malathion	Alfalfa, Clover, Corn, Barley, Oats, Rye, Wheat, Plums, Prunes, Household Use (Indoors), Cats, Dogs, and Animal Quarters
000264–00458	MOCAP EC Nematicide-Insecticide	Ethoprop	Lima Bean
000264–00637	Thiodan Technical	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, and Pecans
000264–00638	Phaser 3EC Insecticide	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, and Pecans
000264–00656	Phaser 50 WP/WSB Insecticide	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, and Pecans
000264–00658	Phaser 3EC Insecticide	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, and Pecans
000264–00659	Phaser 50 WP/WSB Insecticide	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, and Pecans
000432–01209	R&M Garden&Kennel Dust 5%	Carbaryl	Poultry Uses
000432–01210	R&M Garden&Kennel Dust 10%	Carbaryl	Poultry Uses
000432–01237	AES Garden&Kennel Dust 10%	Carbaryl	Poultry Uses
000432–01239	AES Garden&Kennel Dust 5%	Carbaryl	Poultry Uses

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDES—Continued

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
000655–00069	Prentox Cube Resins	Rotenone	Domestic Animal Uses
000769–00574	Sureguard Brand Sevin 80S	Carbaryl	Poultry
000769–00972	Security Brand 50% Sevin Wettable	Carbaryl	Poultry
000829–00075	SA 50 25% Malathion Wettable Spray Concentrate	Malathion	Beans, Broccoli, Turnip Greens, Collards, Mustard, Melons, Squash, Cucumber, Pepper, Tomatoes, and Citrus
001386–00609	Trifluralin 4 EC Herbicide	Trifluralin	Eggplant and Lentils
005741–00012	Metaquat Germicidal Cleaner	Zephiran	Hospital and Non-Food Contact Sanitizer
007401–00069	Fertilome Garden Dust	Carbaryl	Poultry
010163–00055	Prokil Dimethoate	Dimethoate	Grapes and Head Lettuce
010163–00056	Gowan Dimethoate E267	Dimethoate	Grapes and Head Lettuce
010163–00160	Gowan Dimethoate 4	Dimethoate	Grapes and Head Lettuce
010163–00169	Imidan 70 W	Phosmet	Cotton
010163–00172	Imidan Technical	Phosmet	Cotton
010163–00175	Imidan 50 WSB	Phosmet	Cotton
010163–00184	Imidan 70 WSB	Phosmet	Cotton
010163–00215	Imidan 2.5 EC	Phosmet	Cotton
010163–00219	MSR 50% Concentrate	Oxydemeton methyl	Field Corn, Popcor, Pears, Snap Beans, Turnips, Ornamentals Located in Interior Plantscapes, Ornamental Gardens, Parks, Golf Courses, Laws, and Grounds
010163–00220	MSR Spray Concentrate	Oxydemeton methyl	Field Corn, Popcorn, Pears, Snap Beans, Turnips, Ornamentals Located in Interior Plantscapes, Ornamental Gardens, Parks, Golf Courses, Laws and Grounds
011678–00005	Thionex Endosulfan Technical	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, Pecans
011678–00025	Thionex Endosulfan 35 EC	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, Pecans
019713–00099	Drexel Endosulfan 2EC	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, Pecans
019713–00319	Drexel Endosulfan Technical	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, Pecans
019713–00399	Drexel Endosulfan 3EC	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, Pecans
028293–00018	Unicorn Flea&Tick Powder ι2	Carbaryl	Poultry Uses
028293–00233	Unicorn 6.3% Granular Carbaryl Insecticide	Carbaryl	Poultry
034704–00023	Clean Crop Sevin 5 Bait	Carbaryl	Poultry
045728–00007	Carbamate WDG Fungicide	Ferbam	Rough Lemon Nursery Stock, Trees, Flowers, Ornamentals
053345–00003	Ercocide C	Sodium Chlorate	Residential and Recreational Uses
053345–00004	Ercocide S	Sodium Chlorate	Residential and Recreational Uses

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDES—Continued

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
053345–00015	Sodium Chlorate Crystal	Sodium Chlorate	Residential and Recreational Uses
053345–00016	Sodium Chlorate Aqueous Solution	Sodium Chlorate	Residential and Recreational Uses
062719–00073	Stinger	Clopyralid	Strawberry
066222–00062	Thionex 50 W	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, Pecans
066222–00063	Thionex 3EC	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, Pecans
066222–00064	Thionex Technical Insecticide	Endosulfan	Succulent Beans, Succulent Peas, Spinach, Grapes, Pecans
066222–00085	Technical Metolachlor II	Metolachlor	Turf
069874–00002	Sodium Chlorate - High Strength Solution AG	Sodium Chlorate	Airport, Landing Fields, Commercial Equipment, Drainage System, Fencerows, Household Outdoor Premises, Industrial Outdoor, Machinery (non food) Non Agricultural Land, Ornamental Lawns, Paved Areas
069874–00003	Sodium Chlorate Crystal	Sodium Chlorate	Airport, Landing Fields, Commercial Equipment, Drainage System, Fencerows, Household Outdoor Premises, Industrial Outdoor, Machinery (non food) Non Agricultural Land, Ornamental Lawns, Paved Areas
073049–00092	SBP 1382/Bioallethrin (0.20% and 0.125%) APS for H&G	Bioallethrin	Food Processing Establishments
073049–00135	Crossfire APS1 with SBP 1382	Resmethrin, Esbiothruin, Piperonyl Butoxide	Food and Feed Areas of Tood and Feed Handling Establishments
073049–00136	Crossfire APS2 with SBP 1382	Resmethrin, Esbiothrin, Piperonyl Butoxide	Food and Feed Areas of Tood and Feed Handling Establishments
073049–00139	Crossfire APS3 with SBP 1382	Resmethrin, Esbiothrin, Piperonyl Butoxide	Food and Feed Areas of Tood and Feed Handling Establishments
073049–00142	SBP-1382 Oil Base Insecticide Formula III	Resmethrin	Institutional Establishments
073049–00274	Pyrenone W.B. 5-0.5	Piperonyl Butoxide	Food Uses

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 5, 2005 to discuss withdrawal of the application for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE PRODUCTS

EPA Company no.	Company Name and Address
000004	Bonide Products, Inc., 6301 Sutliff Rd., Oriskany, NY 13424.
000070	Value Gardens Supply, LLC, d/b/a Garden Value Supply, PO Box 585, Saint Joseph, MO 64502.
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, PO Box 18300, Greensboro, NC 27419–8300.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE PRODUCTS—Continued

EPA Company no.	Company Name and Address
000228	Nufarm Americas Inc., 1333 Burr Ridge Parkway, Suite 125A, Burr Ridge, IL 60527–0866.
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE PRODUCTS—Continued

EPA Company no.	Company Name and Address
000432	Bayer Environmental Science, A Business Group of Bayer Cropscience LP, PO Box 12014, Research Triangle Park, NC 27709.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001–2000.
000769	Value Gardens Supply, LIC, d/b/a Value Garden Supply, PO Box 585, Saint Joseph, MO 64502.
000829	Southern Agricultural Insecticides, Inc., PO Box 218, Palmetto, FL 34220.
001386	Universal Cooperatives Inc., 1300 Corporate Center Curve, Eagan, MN 55121.
005741	Spartan Chemical Co., Inc., 1110 Spartan Drive, Maumee, OH 43537.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc., 1806 Auburn Drive, Carrollton, TX 750071451.
010163	Gowan Co, PO Box 5569, Yuma, AZ 85366–5569.
011678	Makhteshim Chemical Works Ltd, c/o Makhteshim-Agan of North America Inc., 4515 Falls of Neuse Rd Ste 300, Raleigh, NC 27609.
019713	Drexel Chemical Co, PO Box 13327, Memphis, TN 38113–0327.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
034704	Loveland Products, Inc., PO Box 1286, Greeley, CO 80632.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE PRODUCTS—Continued

EPA Company no.	Company Name and Address
045728	Taminco Inc., Attn: Jean-Michel Denis, 1950 Lake Park Drive, Smyrna, GA 30080.
053345	Lewis & Harrison, Agent For: Erco Worldwide, 122 C St Nw Ste 740, Washington, DC 20001.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2e225, Indianapolis, IN 46268–1054.
066222	Makhteshim-Agan of North America, 4515 Falls of Neuse Rd. Ste 300, Raleigh, NC 27609.
069874	Delta Analytical Corp., Agent For: Nexen Chemicals USA, 7910 Woodmont Ave Ste 1000, Bethesda, MD 20814.
073049	Valent Biosciences Corp., 870 Technology Way, Suite 100, Libertyville, IL 60048–6316.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to John Jamula using the instructions in Unit I.C. The Agency will consider written withdrawal requests postmarked no later than December 5, 2005.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 25, 2005.

Robert A. Forrest,

Acting Director, Information Technology and Resource Management Division, Office of Pesticide Programs.

[FR Doc. 05–21928 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0144; FRL–7744–5]

Phenothrin and s-Methoprene; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellation, voluntarily requested by the registrant and accepted by the Agency, of a product containing the pesticides phenothrin and s-methoprene, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a July 15, 2005 (corrected August 3, 2005) **Federal Register** Notice of Receipt of a Request from the registrant Hartz Mountain Corporation to voluntarily cancel their product Hartz Ref 117, a product labeled for use as a spot-on for cats and kittens. In the July 15, 2005 Notice, EPA indicated that it would issue an order implementing the cancellation no earlier than October 31, 2005. EPA further indicated that the request for cancellation was irrevocable. The Agency did not receive any comments on the Notice during the 30–day comment period. Accordingly, EPA hereby issues in this Notice a cancellation order granting the requested cancellation. Any distribution, sale, or use of the product Hartz Ref 117 is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellation is effective November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 305–6502; fax number: (703) 305–6596; e-mail address: *sibold.ann@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 interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0144. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by the registrant, of Hartz Ref 117, an end-use product containing phenothrin and s-methoprene, labeled as a spot-on to control fleas and ticks on cats and kittens and registered under section 3 of FIFRA. This registration is listed in Table 1 of this unit.

TABLE 1.—PRODUCT CANCELLATION

EPA Registration No.	Product Name
2596–148	Hartz Ref 117

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit.

TABLE 2.—REGISTRANT OF CANCELED PRODUCT

EPA Company No.	Company Name and Address
2596	The Hartz Mountain Corporation, 400 Plaza Drive, Secaucus, NJ 07094–3688

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the **Federal Register** Notice[1] of July 15, 2005, announcing the Agency's receipt of the request for voluntary cancellation of Hartz Ref 117.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation of the registration identified in Table 1 of Unit II. Accordingly, the Agency orders that the product registration identified in Table 1 of Unit II. is hereby canceled effective November 4, 2005. Any distribution, sale, or use of existing stocks of the product identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

[1]A sentence was inadvertently omitted from the **DATES** unit which provided a 30–day comment period. A correction Notice published in the **Federal Register** of August 3, 2005 (70 FR 44635) (FRL–7728–7).

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a Notice of Receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions.

Products in the United States that have been packaged, labeled, and released for shipment prior to the effective date of the cancellation may be sold or distributed by Hartz from its facilities until December 31, 2005, and may be sold or distributed by persons other than Hartz until March 31, 2006. After this date, products may not be sold or distributed unless for the purposes of proper disposal or export.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 28, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–22039 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7994–3]

Protection of Stratospheric Ozone: Notice of Data Availability; Information Concerning the Current and Predicted Use of HCFC–22 and HCFC–142b

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is making available to the public information concerning the current and projected use of HCFC–22 and HCFC–142b, substances known to

deplete stratospheric ozone and scheduled to be phased out. As a Party to the Montreal Protocol on Substances that Deplete the Ozone Layer (''Montreal Protocol'') and consistent with the requirements of the Clean Air Act Amendments of 1990 (''CAAA of 1990''), the United States will meet its obligations to protect stratospheric ozone, including the phasing out of all hydrochlorofluorocarbons (HCFCs). The next major milestone for the HCFC phaseout occurs on January 1, 2010, when, pursuant to EPA regulations, no person may produce HCFC–22 or HCFC–142b except: for use in a process that results in the transformation or the destruction of the HCFCs; for use in equipment manufactured before January 1, 2010; or for export using either Article 5 allowances or export production allowances. In addition, no person may import HCFC–22 or HCFC–142b other than transshipments, heels, or used HCFC–22 or HCFC–142b except: for use in a process that results in the transformation or destruction of the HCFCs; or for use in equipment manufactured prior to January 1, 2010. EPA plans to issue regulations before January 1, 2010, to set the level of the cap on production and import of HCFC–22 and HCFC–142b that would go into effect on that date. Comments submitted in response to today's Notice of Data Availability (NODA) may be used as the Agency prepares that rulemaking.

Today, EPA is making available the report *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector,* prepared by ICF Consulting. The information gathered and presented in the report concerns air-conditioning end uses, refrigeration end-uses, HCFC refrigerants, projected HCFC–22 scenarios, equipment beyond 2010, servicing needs beyond 2010, and factors that affect projections. Because EPA plans to use this information in the future when developing regulations, EPA wants to provide the public with an opportunity to review the information and submit comments. Readers should note that EPA will only consider comments about the information presented in *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector* and is not soliciting comments on any other topic. In particular, EPA is not soliciting comments on the HCFC phaseout established in EPA's December 10, 1993, rulemaking (58 FR 65018).

DATES: EPA will accept comments on the data through January 3, 2006.

ADDRESSES: Submit your comments, identified by EDocket ID No. OAR–2003–0130 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDocket, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- Fax comments to (202) 566–1741.
- Mail/Hand delivery: Submit comments to Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460, and Phone: (202) 566–1742.

Instructions: Direct your comments to EDocket ID No. OAR–2003–0130. 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 on-line 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 Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Cindy Axinn Newberg, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9729 or e-mail: *newberg.cindy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

1. What is today's Action?
2. What information is EPA making available for review and comment?
3. Where can I get the information?
4. How is this action related to the phaseout of ozone-depleting substances?
5. What should I consider as I prepare my comments for EPA?
6. What is EPA not taking comment on?
7. What supporting documentation do I need to include in my comments?
8. Will there be other opportunities to provide comment on the information?

1. What is today's Action?

EPA is issuing a NODA for public review and comment. In order to meet U.S. obligations under the Montreal Protocol and consistent with the CAAA of 1990, EPA is implementing a gradual phase out of HCFCs that targets the most damaging HCFCs first. Interested readers may wish to review previously published **Federal Register** notices concerning the HCFC allowance system: the Final Rule (January 21, 2003; 68 FR 2819), the Proposed Rule (July 20, 2001; 66 FR 38063), the Direct Final Rule (June 17, 2004; 69 FR 34024), the Technical Correction of Final Rule (July 16, 2003; 68 FR 41925), and the Advanced Notice of Proposed Rule Making (April 5, 1999; 64 FR 16373). For more information on the HCFC phaseout schedule, readers may consult the December 10, 1993 **Federal Register** notice that established the current phaseout dates (58 FR 65018), as well as the March 18, 1993 Proposed Rule (58 FR 15014). The next major milestone for

the phaseout is on January 1, 2010, when no person may produce HCFC–22 or HCFC–142b for any purpose other than:

- For use in a process resulting in the transformation or the destruction of the HCFCs,
- For use in equipment manufactured before January 1, 2010, or
- For export using either Article 5 allowances or export production allowances.

In addition, no person may import HCFC–22 or HCFC–142b other than transshipments, heels or used HCFC–22 or HCFC–142b for any purpose other than:

- For use in a process resulting in the transformation or destruction of the HCFCs, or
- For use in equipment manufactured prior to January 1, 2010.

EPA intends to issue regulations prior to January 1, 2010 to set the level of the cap on production and import of HCFC–22 and HCFC–142b that will go into effect on that date. The level of the cap will take into account the needs described above.

Today, EPA is making available information concerning current and projected uses of HCFC–22 and HCFC–142b, the likely universe of equipment manufactured before January 1, 2010 that may require servicing with HCFC–22 or HCFC–142b between 2010 and 2020, and information concerning the likely servicing needs for that equipment between 2010 and 2020. This analysis focuses primarily on HCFC–22 (also known as R–22) servicing needs in the air-conditioning and refrigeration industry, the largest HCFC market and the largest industry sector using HCFCs in the United States.

2. What information is EPA making available for review and comment?

EPA is making available for review and comment a draft report prepared by ICF Consulting under contract to EPA, *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector.*

3. Where can I get the information?

All of the information can be obtained through the Air Docket (see **ADDRESSES** section above for docket contact info). A link to the report *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector will be on the EPA Web site: www.epa.gov/ozone.*

4. How is this action related to the phaseout of ozone-depleting substances?

The table below summarizes the U.S. phaseout schedule for HCFCs, as set forth in EPA regulations to ensure compliance with both the Montreal Protocol and the CAAA of 1990. Readers should consult the regulations at 40 CFR 82.16 for further details (e.g., exceptions for amounts produced for export using certain specialized types of allowances).

HCFC PHASEOUT SCHEDULE

Date	Affected substances	Restriction
Jan. 1, 2003	HCFC–141b	No production and no import of HCFC–141b.
Jan. 1, 2010	HCFC–142b, HCFC–22	No production and no import of HCFC–142b and HCFC–22, except for use in equipment manufactured before 1/1/2010.
Jan. 1, 2015	All Other HCFCs	No production and no import of any other HCFCs, except for use as a refrigerant in equipment manufactured before 1/1/2020.
Jan. 1, 2020	HCFC–142b, HCFC–22	No production and no import of HCFC–142b and HCFC–22.
Jan. 1, 2030	All Other HCFCs	No production and no import of any HCFCs.

The information made available today concerns projections that will assist EPA as it prepares to propose regulation concerning the January 1, 2010 milestone.

5. What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

6. What is EPA not taking comment on?

EPA is only accepting comments on accuracy and completeness of the information outlined in today's **Federal Register** Notice and contained in the report *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector.* EPA is not accepting comment on the following:

- HCFC phaseout established in EPA's December 10, 1993 rulemaking (58 FR 65018),
- The Allowance System for Controlling HCFC Production, Import and Export, or
- The commitments of the U.S. as a Party to the Montreal Protocol.

7. What supporting documentation do I need to include in my comments?

Please provide any published studies or raw data supporting your position.

8. Will there be other opportunities to provide comment on the information?

EPA may schedule a public meeting for stakeholders concerning the report, *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector,* after January 3, 2006 to continue a dialogue regarding the information presented in the report. If a public meeting is scheduled, information concerning that meeting will be available on the EPA Web site: *www.epa.gov/ozone.*

Dated: October 27, 2005.

Edward Callahan,

Acting Director, Office of Atmospheric Programs, Office of Air and Radiation, U.S. Environmental Protection Agency.

[FR Doc. 05–22036 Filed 11–3–05; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Friday, November 4, 2005 at 9 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2006.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571. (Tele. No. 202–565–3957.)

Howard A. Schweitzer,

General Counsel (Acting).

[FR Doc. 05–22114 Filed 11–2–05; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 8, 2005, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- October 13, 2005 (Open)

B. Reports

- Office of Management Services Report

C. New Business—Regulations

- FCA Organization—Final Rule

Dated: November 2, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–22122 Filed 11–2–05; 12:50: pm]

BILLING CODE 6705–01–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 18, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Eva K. Grauer, Wilson, Kansas, as trustee of the Robert L. Grauer Trust No. 1, Wilson, Kansas; to retain voting shares of Wilson Bancshares, Inc., Wilson, Kansas, and thereby indirectly retain voting shares of Wilson State Bank, Wilson, Kansas.

Board of Governors of the Federal Reserve System, October 31, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6102 Filed 11–3–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E5–5964) published on page 61976 of the issue for Thursday, October 27, 2005.

Under the Federal Reserve Bank of Kansas City heading, the entry for Garth Lee Gibson and Cynthia Annette Gibson, both of Montrose, Colorado, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Garth Lee Gibson and Cynthia Annette Gibson, both of Montrose, Colorado; to acquire voting shares of First Mountain Company, Montrose, Colorado, and thereby indirectly acquire voting shares of MontroseBank, Montrose, Colorado.

Comments on this application must be received by November 14, 2005.

Board of Governors of the Federal Reserve System, October 31, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6104 Filed 11–3–05; 8:45 am]

BILLING CODE 6210–01–S

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 22, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. John C. Elsenpeter 2004 Term Trust and the John C. Elsenpeter 2005 Term

Trust; John C. Elsenpeter, individually and as trustee of the JCE Trusts; the Vicki J. Elsenpeter 2004 Term Trust and the Vicki J. Elsenpeter 2005 Term Trust; and Vicki J. Elsenpeter, individually and as trustee of the VJE Trusts, all of Walker, Minnesota; a group acting in concert, to acquire voting shares of Walker Ban Co., Walker, Minnesota, and thereby indirectly gain control of First National Bank of Walker, Walker, Minnesota and Lakes State Bank, Pequot Lakes, Minnesota.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Clarkson D. Lauritzen, Omaha, Nebraska; to acquire control of The Viking Corporation, Omaha, Nebraska, and thereby indirectly acquire Crawford County Trust and Savings Bank, Denison, Iowa, and Landmands National Bank, Audubon, Iowa.

Board of Governors of the Federal Reserve System, November 1, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6120 Filed 11–3–05; 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 *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Gateway Financial Holdings, Inc., Elizabeth City, North Carolina; to acquire up to 9.9 percent of the voting shares of Commonwealth Bankshares, Inc., Norfolk, Virginia, and thereby indirectly acquire voting shares of Bank of the Commonwealth, Norfolk, Virginia.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Gateway Financial Holdings of Florida, Inc., Ormond Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Gateway Bank of Florida, Ormond Beach, Florida (in organization).

C. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Clayton Bancorp, Inc., Henderson, Tennessee; to merge with Bancshares of Camden, Inc., Camden, Tennessee, and thereby indirectly acquire voting shares of Bank of Camden, Camden, Tennessee.

Board of Governors of the Federal Reserve System, October 31, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6103 Filed 11–3–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Mallinckrodt Chemical Company, Destrehan Street Plant, in Saint Louis, Missouri as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 14, 2005, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked in the Uranium Division at the Destrehan Street Facility of Mallinckrodt Chemical Works from 1949 to 1957 and who were employed for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days of employment occurring within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

This designation will become effective on November 13, 2005, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: October 31, 2005.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 05–22029 Filed 11–3–05; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Decision to Evaluate a Petition To Designate a Class of Employees at the Oak Ridge Institute for Nuclear Studies, Oak Ridge, TN, To Be Included in the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Oak Ridge Institute for Nuclear Studies, Oak Ridge, Tennessee, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Oak Ridge Institute for Nuclear Studies.

Location: Oak Ridge, Tennessee.

Job Titles and/or Job Duties: All medical division employees.

Period of Employment: June 1, 1950 through June 25, 1956.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: October 31, 2005.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 05–22030 Filed 11–3–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0422]

Agency Information Collection Activities; Proposed Collection; Comment Request; Emergency Shortages Data Collection System (Formerly the Emergency Medical Device Shortage Program Survey)

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 Emergency Shortages Data Collection System (formerly the Emergency Medical Device Shortage Program Survey).

DATES: Submit written or electronic comments on the collection of information by January 3, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, 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 topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Emergency Shortages Data Collection System (Formerly the Emergency Medical Device Shortage Program Survey)—21 CFR Part 20 (OMB Number 0910–0491)—Extension

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(d)(2)), the FDA Commissioner is authorized to implement general powers (including conducting research) to carry out effectively the mission of FDA. Section 510 of the act (21 U.S.C. 360) requires that domestic establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution register their establishments and list the devices they manufacture with the FDA. Section 522 of the act (21 U.S.C. 360(l) 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. These sections of the act enable FDA to enhance consumer protection from risks associated with medical device usage that are not foreseen or apparent during the premarket notification and review process.

Subsequent to the events of September 11, 2001, FDA's Center for Devices and Radiological Health (CDRH) began planning for handling medical device shortage issues associated with counter-terrorism. One of the activities related to the planning was that CDRH would establish a data collection system as a supplemental source for available product. Because of events on September 11, 2001, local and State governments have obtained stockpiles of backup supplies within their jurisdiction to cover an emergency for the first 12 hours following a terrorist attack. The second 12 hours will have additional medical devices supplied by the Centers for Disease Control's Strategic National Stockpile and the National Acquisition Center. However, if additional supplies are needed in the first 12 hours, the Department of Health and Human Services (HHS) will request that FDA provide the number of medical devices readily available to meet demands. HHS has an established

transportation and delivery mechanism in place to provide these emergent needs to the local and State authorities.

The Emergency Medical Device Shortage Survey was established in 1992 to collect data to assist FDA in implementing an emergency medical device shortage program that would find resources to supplement the needed supplies. In 2004, CDRH changed the process for the data collection and the name was changed to the Emergency Shortages Data Collection System. Because of the confidentiality aspect of the information, the information is only available to those on the FDA Emergency Shortage Team (EST) and senior management with a need-to-know. The need-to-know personnel include 5 EST members, the EST Leader, the EST data entry technician, and 5 senior managers.

The Emergency Shortages Data Collection System will be updated every 4 months to keep information current. CDRH learned that medical device manufacturers have a high rate of turnover in personnel and in corporate structures due to mergers with larger companies. In addition, with the constant advances in technology, some of these manufacturers are forced to discontinue product lines or add product lines to their inventory. This new data collection system process will update information on a regular basis ensuring more accurate information in an emergency/disaster.

The process consists of one scripted telephone call to the designated shortage person at the four or five largest manufacturers of specific medical devices that may be needed by first responders in a national emergency. At the current time, the list contains 67 products from 65 manufacturers. If other products or new technology are deemed necessary to add at a later date, then the EST will conduct the appropriate search to find the four or five largest manufacturers of that product line and request the manufacturer's voluntary inclusion into the program.

The Emergency Shortages Data Collection System will only include those medical devices that are expected to be in demand but in short supply in an emergency/disaster. The data collection system includes life-saving and life-sustaining products (i.e., mechanically powered ventilators) as well as products that would require frequent changes resulting in rapidly depleted supplies (i.e., face masks and gloves).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
65	3	195	.5	98

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on past experience with direct contact with the medical device manufacturers. FDA estimates that approximately 65 manufacturers would be contacted by electronic mail three times per year to get updated information at their facility. Further, it is estimated that the manufacturers may require up to 30 minutes to check if information received previously is still current and send electronic mail back to FDA.

Dated: October 26, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21973 Filed 11–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0516]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; 2005 Food Safety Survey; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of October 24, 2005 (70 FR 61455). The document announced an approval by the Office of Management and Budget. The document was published with an incorrect expiration date for OMB control number 0910–0345. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–21157, appearing on page 61455 in the **Federal Register** of Monday, October 24, 2005, the following correction is made:

1. On page 61455, in the second column, in the **SUPPLEMENTARY INFORMATION** section, beginning on line 13, the sentence ''The approval expires on February 30, 2008.'' is corrected to read ''The approval expires on February 29, 2008.''

Dated: October 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21974 Filed 11–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002E–0020] (formerly Docket No. 02E–0020)

Determination of Regulatory Review Period for Purposes of Patent Extension; ZOMETA; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of February 28, 2003 (68 FR 9690). The document announced that FDA had determined the regulatory review period for ZOMETA. A Request for Revision of Regulatory Review Period was filed for the product on May 4, 2005. FDA reviewed its records and found that the effective date of the investigational new drug application (IND) was incorrect due to a clerical error. Therefore, FDA is revising the determination of the regulatory review period to reflect the correct effective date for the IND.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–13), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6681.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–4691, appearing on page 9690 in the **Federal Register** of February 28, 2003, the following corrections are made:

1. On page 9690, in the third column, in the first complete paragraph, in the third line, ''2,810'' is corrected to read ''2,901''; in the fourth line, ''2,201'' is corrected to read ''2,292''.

2. On page 9690, in the third column, in the second complete paragraph, beginning in the fourth line, ''December 12, 1993'' is corrected to read ''September 12, 1993''; in line 10, ''December 12, 1993'' is corrected to read ''September 12, 1993''.

Dated: October 20, 2005.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 05–22012 Filed 11–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Advisory Committee; 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: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services, when that research is also regulated by FDA.

Date and Time: The meeting will be held on Friday, November 18, 2005, from 8 a.m. to 2 p.m.

Location: Washington DC North/ Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Jan N. Johannessen, Office of Science and Health Coordination of the Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14C–06), Rockville, MD 20857, 301–827–6687, or by e-mail: *jjohannessen@fda.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss a report by the agency on Adverse Event Reporting, as mandated in Section 17 of the Best Pharmaceuticals for Children Act, for AGRYLIN (anagrelide), PARAPLATIN (carboplatin), DIFLUCAN (fluconazole), CAMPTOSAR (irinotecan), TAMIFLU (oseltamivir), VIOXX (rofecoxib), FERRLECIT (sodium ferric gluconate complex), and IMITREX (sumatriptan).

The background material will become available no later than the day before the meeting and will be posted under the Pediatric Advisory Committee Docket site at *http://www.fda.gov/ ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Advisory Committee meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 10, 2005. Oral presentations from the public will be scheduled on Friday, November 18, 2005, between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by November 10, 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 Jan Johannessen 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 31, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–22014 Filed 11–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); 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: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

General Function of the Committee: To advise the Secretary of Health and Human Services (the Secretary) and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand study by the U.S. Air Force and provide scientific oversight of the Department of Veterans Affairs Army Chemical Corps Vietnam Veterans Health Study, and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

Date and Time: The meeting will be held on November 18, 2005, from 8:30 a.m. to 4 p.m.

Location: Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Leonard Schechtman, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512560. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the following items: (1) Updates and interactions with the Institute of Medicine's Air Force Health Study (AFHS) Disposition Study Committee; (2) AFHS closure preparations; (3) updates from the Air Force on the AFHS history, program management, and the Comprehensive Study Report; (4)

update from the Air Force on the 2002 AFHS Physical Examination Report; and (5) discussion of AFHS fiscal year 2006 activities.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 10, 2005. Oral presentations from the public will be scheduled on November 18, 2005, between approximately 11:15 a.m. to 12:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should likewise notify the contact person before November 10, 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 Leonard Schechtman at least 7 days in advance of the meeting.

Dated: October 28, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–22013 Filed 11–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Information Resources for Radiation Science.

Date: December 8, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr., PhD.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21999 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: December 1, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: 1. NCI Listens and Learns Web Site; 2. Update on Summit planning; 3. Update from OLA; 4. Public Comment; 5. Next Steps.

Place: National Institutes of Health, 6116 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Brooke Hamilton, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Blvd., Suite 220, MSC 8324, Bethesda, MD 20891, 301–435–3855, *hamiltbr@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–22000 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Trials of Silymarin for Liver Diseases.

Date: December 1, 2005.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Martina Schmidt, PhD, Scientific Review Administrator, Office of Scientific Review, Nat'l Center for Complementary and Alt Medicine, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. 301–594–3456. *schmidma@mail.nih.gov.*

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21989 Filed 11–3–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Centrosome Remodeling in Cloned Pigs Embryos.

Date: November 17, 2005.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884; *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21990 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Targeting Inflammation.

Date: November 21, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, MPH, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21991 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Member Conflict Meeting.

Date: November 3, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21992 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, HIV/AIDS.

Date: November 18, 2005.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301/443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21994 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interventions and Practice Research Infrastructure Program.

Date: November 21, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21995 Filed 11–3–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Stem Cells: Promise and Peril in Regenerative Medicine.

Date: November 10, 2005.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21996 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Pinpoint the Timing of Telomere Restoring Events.

Date: November 22, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health HHS).

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21997 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Improving Blastocyst Inner Cell Mass Viability.

Date: November 16, 2005.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21998 Filed 11–3–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Intergenerational Dietary Patterns.

Date: November 30, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 24, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–22001 Filed 11–3–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Yeast Prions.

Date: November 14, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 708, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diagnostics and Prevention of Prions Diseases.

Date: November 15, 2005.

Time: 4 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 708, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Technologies for Environmental Monitoring.

Date: November 18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Stress Reduction and Lifestyle Changes to Prevent Disease.

Date: November 22, 2005.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Inflammatory HDL.

Date: December 1, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Serotonin and Vascular Tone.

Date: December 6, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ischemia Reperfusion Injury.

Date: December 7, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.

Date: December 8, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Khalid Masood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095H, MSC 7854, Bethesda, MD 20892, 301–402–3962, *masoodk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Angiotensin Receptors.

Date: December 8, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Orthopedic Medicine.

Date: December 8–9, 2005.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC., 1400 M Street, NW., Washington, DC 20005.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–21993 Filed 11–3–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that

certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702 / 800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare, Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122 , 206–923–7020/800–898–0180, (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Toxicology, a LabOne Company, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–606–6301/800–322–3361, (Formerly: LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.)

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7897x7

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Sciteck Clinical Laboratories, Inc., 317 Rutledge Road, Fletcher, NC 28732, 828–650–0409

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052,

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. 05–21801 Filed 11–3–05; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: The National Flood Insurance Program—Biennial Report.

OMB Number: 1660–0003.

Abstract: The NFIP Biennial Report enables FEMA to meet its regulatory requirement under 44 CFR 59.22(b)(2). It also enables FEMA to be more responsive to the ongoing changes that occur in each participating community's flood hazard area. These changes include, but are not limited to, new corporate boundaries, changes in flood hazard areas, new floodplain management measures, and changes in rate of floodplain development. It is also used to evaluate the effectiveness of the community's floodplain management activities. The evaluation is accomplished by analyzing information provided by the community, such as the number of variances and flood plain permits granted by each community in relationship to other information contained in the Biennial Report, as well as other data available in FEMA's Community Information System (CIS). The Biennial Report also provides an opportunity for the National Flood Insurance Program (NFIP) participating communities to request technical assistance in implementing a floodplain management program. FEMA regional offices use this information as a means to know which communities need support and guidance. In addition, the NFIP Biennial Report is one of the tools used to assist FEMA in meeting its regulatory requirement under section 575 of the National Flood Insurance Reform Act of 2004. A ''yes'' answer to Items A–D in Section I of the report will provide the basis for FEMA to follow-up by contacting the community for clarification and/or elaboration regarding changes and activities occurring in a community's flood hazard area. This information will be used in ranking and prioritizing one community's mapping needs against all other communities in the NFIP and for determining how the limited flood hazard mapping funds are allocated for map updates.

Affected Public: State, local and Tribal governments.

Number of Respondents: 20,500 respondents.

Estimated Time per Respondent: 2.49 hours.

Estimated Total Annual Burden Hours: 11,375.

Frequency of Response: Every two years.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: October 28, 2005.

Darcey Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–22061 Filed 11–3–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1609–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1609-DR), dated October 24, 2005, and related determinations.

DATES: Effective October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 24, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Wilma beginning on October 23, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation, and the Other Needs Assistance under the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Justin DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Collier, Lee, and Monroe Counties for Individual Assistance.

Brevard, Broward, Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Miami-Dade, Monroe, Okeechobee, Osceola, Palm Beach, Polk, St. Lucie, and Sarasota Counties for debris removal and emergency protective measures, including direct Federal assistance, at 75 percent Federal funding. For a period of up to 72 hours, assistance for debris removal and emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 05–22004 Filed 11–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1609–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1609–DR), dated October 24, 2005, and related determinations.

DATES: Effective: October 25, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 24, 2005:

Broward, Miami-Dade, and Palm Beach Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 05–22005 Filed 11–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1609–DR]

Florida; Amendment No. 2 To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1609–DR), dated October 24, 2005, and related determinations.

DATES: Effective: October 26, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 24, 2005:

Glades, Hendry, Martin, and St. Lucie Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 05–22006 Filed 11–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1604–DR]

Mississippi; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

DATES: Effective October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

Holmes and Humphreys Counties for Individual Assistance (already designated for Public Assistance, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 05–22003 Filed 11–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: Effective November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 27, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–21776 Filed 11–3–05; 8:45am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the

opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: Technical team/subgroup organization; Budget process and FY07 budget; Science Framework and draft monitoring plan; Trinity River Restoration Program attention to (non-fish) wildlife; 50% vs 90% ''exceedence criteria'' in water-year-type forecasting; 2005 fish returns; and TAMWG member presentations. Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 8:30 a.m. to 5 p.m. on Wednesday, December 7, 2005.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 1709 Main Street, Weaverville, CA 96093. Telephone:(530) 623–4432.

FOR FURTHER INFORMATION CONTACT: Mike Long of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521, (707) 822–7201. Mike Long is the working group's Designated Federal Official.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

Dated: October 31, 2005.

Paul Henson,

Acting Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 05–22009 Filed 11–3–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Bird Banding Laboratory Advisory Committee

AGENCY: Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The inaugural meeting of the Advisory Committee on the Bird Banding Laboratory (Committee) will be November 29–30, 2005, from 8:30 a.m. to 4:30 p.m. each day at the U.S. Geological Survey's (USGS) Patuxent Wildlife Research Center, 11510 American Holy Drive, Laurel, Maryland 20708–4017. The meeting will take place in the conference room of the Gabrielson Building. A map and directions to the Center may be found at *http://www.pwrc.usgs.gov/aboutous/direct.cfm.* The purpose of the Advisory Committee, which is co-chaired by the USGS and the U.S. Fish and Wildlife Service, is to represent the interests of the bird banding community, including both game and non-game and non-game birds, in advising the U.S. Department of the Interior, USGS, on current and future management of the Bird Banding Laboratory. The agenda for the inaugural meeting includes a tour of the Bird Banding Laboratory to familiarize members of the Committee with its operations, functions, and key personnel. In addition, the Committee will identify, prioritize, and begin discussions of the important issues it will address over the two-year period of its current Charter (May 2005–May 2007).

The meeting is open to all members of the interested public; however, it will be temporarily closed to the public on November 29 during the Committee tour due to space limitations at the Laboratory. Time on the agenda has been reserved in the afternoon of November 30 for the Committee to receive verbal comments (limited to 5 minutes per person) from the public. To speak before the Committee you must register in advance with Mr. Daniel James (see contact information below), the USGS Designated Federal Official for the Committee.

The Patuxent Wildlife Research Center is a gated, secure federal installation with no general public access. You must register with Patuxent personnel in advance of the Committee meeting dates to ensure that you are permitted access to the Center when you arrive. Please contact Ms. Regina Lanning, the Center's Communication Assistant, telephone: (301) 497–5509; e-mail: *regina_lanning@usgs.gov*, to inform her that you will be attending the BBL Advisory Committee Meeting, and provide her with the following information: Full name (for each person if more than one), Company name (if applicable), Vehicle description, Approximate time of arrival dates: November 29–30, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel L. James, the Committee Designated Federal Official (DFO), 12201 Sunrise Valley Drive, MS 301, Reston, Virginia 20192; 703–648–4253, e-mail: *dan_james@usgs.gov.*

Dated: October 31, 2005.

Susan D. Haseltine,

Associate Director for Biology.

[FR Doc. 05–22010 Filed 11–3–05; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–110–1610–DS]

Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Kasha-Katuwe Tent Rocks National Monument Resource Management Plan (RMP)

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: NOA of a Draft Resource Management Plan/Environmental Impact Statement (DRMP/EIS) for the Kasha-Katuwe Tent Rocks National Monument, New Mexico.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969 (NEPA), the BLM announces the availability of the DEIS for the Kasha-Katuwe Tent Rocks National Monument RMP. The DEIS documents the direct, indirect, and cumulative environmental impacts of three alternative management plans for BLM-administered public lands within the Kasha-Katuwe Tent Rocks National Monument. When completed, the RMP will fulfill the obligations set forth by NEPA, the Federal Land Policy and Management Act, and associated Federal regulations.

DATES: The Kasha-Katuwe Tent Rocks National Monument DRMP/EIS will be available for review for 90 calendar days from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. In order to assure your comments and resource information submissions are fully considered they must be received within the 90-day review period identified above.

Open House meetings will be scheduled to provide the public additional opportunities to submit written comments on the Kasha-Katuwe Tent Rocks National Monument DRMP/EIS. All meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, New Mexico BLM Web site announcements, or mailings.

ADDRESSES: A copy of the DRMP/EIS has been sent to affected Federal, State, and local government agencies and to interested parties. The document may

be available electronically on the following web site: *http://www.blm.gov/nhp/spotlight/state_info/planning.htm.* Copies of the DRMP/EIS will be available for public inspection at the following locations: BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM 87505; BLM Rio Puerco Field Office, 435 Montaño Road NE, Albuquerque, NM 87107. The current RMPs, EISs, and all other documents relevant to this planning process, are available for public review at the Rio Puerco Field Office at the above address.

Written comments may be mailed directly, or delivered to the BLM at: Kasha-Katuwe Tent Rocks National Monument, DRMP/EIS, BLM Rio Puerco Field Office, 435 Montaño Road NE., Albuquerque, NM 87107. Comments may be electronically mailed to: *NM_Comments@nm.blm.gov.*

Comments may be faxed to the BLM at: (505) 761–8911. Comments that are e-mailed or faxed must include ''Comments on Kasha-Katuwe Tent Rocks National Monument DRMP/EIS'' in the subject line. Interested parties may also provide written comments during the public open house meetings. In order to assure that your comments are fully considered they must be submitted in one of the four ways described above. To be given consideration by the BLM all DRMP/EIS comment submittals must include the commentor's name and street address.

Our practice is to make comments, including the name and street address of each respondent, available for public review at the BLM office listed above during business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays). Your comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address, or both, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. We will not consider anonymous comments. All submissions from organizations and businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Contact Mr. John Bristol, RMP Team Leader, at the BLM Rio Puerco Field Office (see address above), telephone (505) 761–8755. Requests for information may be sent electronically to: *NM_Comments@nm.blm.gov* with ''Attention: KKTR NM DRMP/EIS Information Request'' in the subject line.

SUPPLEMENTARY INFORMATION: In 2001, Kasha-Katuwe Tent Rocks National Monument, was designated a National Monument by Presidential Proclamation 7394. The proclamation directed management of the monument by the Secretary of the Interior through the Bureau of Land Management. It required the development of a Management Plan in close cooperation with the Pueblo de Cochiti and the promulgation of regulations for its management as the Secretary of the Interior deems appropriate. The monument is located in Sandoval County, New Mexico. Within the monument boundaries are 4,124 acres federally owned land, 521 acres of State owned land and 757 acres land in private ownership, for a total of 5,402 acres.

The DRMP/EIS describes the physical, biological, cultural, historic, and socioeconomic resources in the ''Decision Area'' (5,402 acres) and the ''Planning Area'' (15,635 acres—includes edge-holdings). The focus for impact analysis was based on resource issues and concerns identified during scoping and public involvement activities and opportunities. Issues of concern regarding possible management direction and planning decisions (not in priority order) are: land tenure adjustments, access and transportation, recreation (use and development), ecosystem restoration, and American Indian uses and traditional cultural practices.

Three alternatives were analyzed in detail: Alternative A is the No Action Alternative representing the continuation of existing management plans, policies, and decisions established in the 1986 Rio Puerco RMP, as amended, and as implemented through the Tent Rocks ACEC Protection Plan, with minimal compliance with proclamation requirements. Alternative B represents the agency proposed resource use and conservation alternative. Alternative C emphasizes an adaptive management approach (particularly for recreation management) with the inclusion of additional monitoring. The monitoring results would trigger management changes to maximize recreational use and facility development while minimizing natural resource degradation and depletion. The BLM's preferred alternative is Alternative B.

Since the publication of the Notice of Intent (NOI) to prepare an RMP/EIS in the **Federal Register** on January 22, 2004, open house meetings, scoping meetings, and mailings have been conducted to solicit public comments and input. The Rio Puerco Field Office has been providing updates on the development of this DRMP/EIS to the Sandoval County Manager, Pueblo de Cochiti and the New Mexico Resource Advisory Council. Other tribal governments with interests in the monument area were also consulted. From the publication date of the NOI in the **Federal Register**, through June 30, 2005, the BLM solicited and received approximately 30 submissions from interested parties. In addition, three public meetings were held to provide the public with an opportunity to acquire information about the RMP/EIS process and its status, and to submit comments. These public meetings were held in Pena Blanca, New Mexico, on February 24, 2004, Rio Rancho, New Mexico, February 25, 2004 and in Santa Fe, New Mexico, February 26, 2004. All comments received throughout the process have been considered. Background information and maps used in developing the DRMP/EIS are available for public viewing at the Rio Puerco Field Office at the above address.

Dated: September 6, 2005.

Jesse J. Juen,

Associate State Director.

[FR Doc. 05–22037 Filed 11–3–05; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–920–1310–FI; CACA 42933]

Proposed Reinstatement of Terminated Oil and Gas Lease CACA 42933

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, Hamar Associates timely filed a petition for reinstatement of oil and gas lease CACA 42933 for lands in San Luis Obispo County, California, and it was accompanied by all required rentals and royalties accruing from June 1, 2005, the date of termination.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Edgerly, Land Law Examiner, Branch of Adjudication, Division of Energy & Minerals, BLM California State Office, 2800 Cottage Way, W–1834, Sacramento, California 95825, (916) 978–4370.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction

thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2005, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: October 19, 2005.

Debra Marsh,

Supervisor, Branch of Adjudication, Division of Energy & Minerals.

[FR Doc. 05–22038 Filed 11–3–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lake Berryessa Visitor Services Plan, Napa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability (NOA) of the final environmental impact statement (EIS).

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Reclamation has prepared a Final EIS for the Lake Berryessa Visitor Services Plan (VSP). The Final EIS outlines the proposed project alternatives that seek to address issues related to the VSP, including the type and level of facilities and services that are appropriate for future uses on Federal land. Of the seven concession contracts at Lake Berryessa, six contracts expire in 2008/2009 and one interim contract expires in 2007. The VSP will be used as a basis for future concession contracts.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after release of the Final EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: To obtain a compact disc or paper copy of the Final EIS, please e-mail Ms. Janet Sierzputowski at *jsierzputowski@mp.usbr.gov* or write Ms. Sierzputowski at Bureau of Reclamation, 2800 Cottage Way (MP–140), Sacramento, CA 95825. The Final EIS may be viewed on the Region's Web site at *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=41*. Copies of the Final EIS are available for review and inspection in public libraries in the project area.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Lucero at 707–966–2111 x106, fax 707–966–0409, or e-mail: *plucero@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION:

Background

Lake Berryessa was created as part of the Solano Project with the completion of Monticello Dam in 1957. In 1958, Reclamation and the County of Napa entered into an agreement for Napa County to assume recreational management responsibilities for the lake. A Public Use Plan (PUP) was developed by the National Park Service in 1959 to guide Reclamation and Napa County in the development of recreational facilities at the lake. In 1975, Reclamation resumed direct management of Lake Berryessa as a result of Title VI of the Reclamation Development Act of October 27, 1974 (Pub. L. 93–493), which authorizes Reclamation to provide for the protection, use, and enjoyment of the aesthetic and recreational values at Lake Berryessa. In 1987, a new planning process began to develop an updated management document for the lake. A Reservoir Area Management Plan (RAMP) was developed to provide guidance for Reclamation in management issues which were not mentioned in the PUP and to assist Reclamation in administering the lake and concession areas. Reclamation completed a Final EIS for the RAMP in 1993.

Presently there are seven concessionaires authorized by Reclamation to provide commercial support services to Lake Berryessa visitors. These seven concession contracts have been in effect since the late 1950s. One of the contracts will expire in 2007 and the other six will expire by 2009. Reclamation also administers two day-use areas and a public boat launching facility as well as numerous roadside turnouts and trails. The east side of the lake has been designated a State Wildlife Area and is managed cooperatively by Reclamation and the California Department of Fish and Game.

Visitor Services Plan (VSP)

The VSP will identify and develop the types and levels of recreation support services and facilities to be provided both commercially and by the government at Lake Berryessa. Some of the issues to be addressed in the VSP include day use needs, long-term and short-term recreational vehicle and trailer sites, retention or elimination of exclusive long-term trailer sites as presently operated, campground development, marina development, consolidation or expansion of existing commercial operations, new services development and construction, retention or removal of existing facilities, food and beverage service needs, overnight lodging facilities, and support for marine-based activities such as fishing (individual and tournament), swimming, water skiing, etc.

Additional Information

Additional information is available at the Web site: *http://www.usbr.gov/mp/berryessa.*

A Notice of Availability of the Draft EIS was published in the **Federal Register** on October 31, 2003 (68 FR 62097). Notices to extend the comment period were published on February 13, 2004 (69 FR 7261) and on May 4, 2004 (69 FR 24668). The last extension of the comment period ended on April 22, 2004. The Final EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

Reclamation's practice is to make any communication related to proposed projects, including names and home addresses, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your communication. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: September 30, 2005.

Alan R. Candlish,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 05–22025 Filed 11–3–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION; UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for Alternatives for Improved Flood Control of the Hidalgo Protective Levee System, in the Lower Rio Grande Flood Control Project, Located in Hidalgo County, TX.

AGENCY: United States Section, International Boundary and Water Commission (USIBWC), United States and Mexico.

ACTION: Notice of Availability of Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the USIBWC's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice that the Final Environmental Assessment and Finding of No Significant Impact for *Alternatives for Improved Flood Control of the Hidalgo Protective Levee System,* in the Lower Rio Grande Flood Control Project, located in Hidalgo County, Texas are available. A notice of finding of no significant impact dated June 30, 2005, provided a thirty (30) day comment period before making the finding final. The Notice was published in the **Federal Register** on July 8, 2005 (70 FR 39527).

FOR FURTHER INFORMATION CONTACT: Gilbert Anaya, Environmental Management Division; United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4703, e-mail: *gilbertanaya@ibwc.state.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action

The USIBWC is considering alternatives to raise the Hidalgo Protective Levee System. The proposed action will take place in two construction phases, each covering separate geographic reaches of the Hidalgo Protective Levee System. Phase 1 encompasses the upstream 3.3-mile reach of the levee system, from the Hidalgo Levee junction with the LRGFCP Main Floodway, to the west margin of the Hidalgo-Reynosa International Bridge. Phase 2, for subsequent implementation, covers the 1.2-mile downstream reach starting at the international bridge. The phased construction approach responds to the likely availability of early funding for Phase 1, the upstream reach of the project.

In-place increase of levee height under the *Phase 1 Footprint Expansion Alternative* is the Proposed Action for Phase 1 of the project. This alternative will increase flood containment capacity by raising the height of the existing compacted earthen levee to meet the freeboard requirement indicated by the hydraulic model. Soil borrow easements will be used to secure levee material.

Partial rerouting of the 1.2-mile downstream reach of the levee system under the *Partial Levee Rerouting Alternative* is the Phase 2 Proposed Action. Levee rerouting is proposed to eliminate the need for construction of a floodwall in front of the Hidalgo Historic Pumphouse, a resource included in the National Register of Historic Places (NRHP). A new levee segment, approximately 0.7 mile in length, will be built along the south margin of the pumphouse intake channel, and the channel will be crossed to tie the new structure to the existing levee system. Floodwall placement will be required along the Hidalgo-Reynosa International Bridge.

Alternatives under consideration to improve the Hidalgo Protective Levee System will expand the levee footprint by lateral extension of the structure. Levee footprint increases toward the riverside could potentially extend into floodplain areas designated by the U.S. Fish and Wildlife Service as part of the Lower Rio Grande Valley (LRGV) National Wildlife Refuge System. Footprint increases toward the levee landside could extend beyond the USIBWC right-of-way.

Alternatives Considered

Phase 1 Alternative

A *Phase 1 No Action Alternative* was evaluated for the 3.3-mile upstream reach of the levee system. This alternative would retain the existing configuration of the Hidalgo Protective Levee System, as designed over 30 years ago, and the current level of protection currently associated with this system. Under severe storm events, current containment capacity will be insufficient to fully control Rio Grande flooding with risks to personal safety and property.

Phase 2 Alternatives

A *Phase 2 No Action Alternative* and two action alternatives to the Proposed Action were evaluated for Phase 2 of the levee system improvement project: the *Footprint Expansion Alternative*, and the *No-Footprint Expansion Alternative.*

Under the *Phase 2 No Action Alternative,* the existing Hidalgo Protective Levee System would be retained in its current configuration along levee miles 3.3 to 4.5.

Under the *Phase 2 Footprint Expansion Alternative,* height of the existing levee would be increased with the associated lateral expansion of the footprint. Placement of floodwalls would be required at two segments where retaining walls are currently present: along the two spans of the Hidalgo-Reynosa International Bridge, and along the Hidalgo Historic Pumphouse.

Under the *No-Footprint Expansion Alternative,* a mechanically stabilized earth structure along the levee crown would eliminate the need for an expanded earthen levee and footprint expansion. Floodwall placement would be required both at the Hidalgo Historic Pumphouse and along the two spans of the Hidalgo-Reynosa International Bridge.

Availability

Single hard copies of the Final Environmental Assessment and final Finding of No Significant Impact may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Home Page at *http://www.ibwc.state.gov.*

Dated: October 24, 2005.

Susan Daniel,

General Counsel.

[FR Doc. 05–22089 Filed 11–3–05; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–552]

Certain Flash Memory Devices and Components Thereof, and Products Containing Such Devices and Components; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 29, 2005, under section 337 of the Tariff Act of 1930, as amended,

19 U.S.C. 1337, on behalf of Toshiba Corporation of Tokyo, Japan. A supplemental letter was filed on October 20, 2005. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory devices and components thereof, and products containing such devices and components, by reason of infringement of claims 1–4 of U.S. Patent No. 5,150,178, claims 1 and 6–7 of U.S. Patent No. 5,270,969, and claims 1 and 4 of U.S. Patent No. 5,517,449. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2767.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 31, 2005, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flash memory devices or components thereof, or products containing such devices or components, by reason of infringement of one or more of claims 1–4 of U.S. Patent No. 5,150,178, claims 1 and 6–7 of U.S. Patent No. 5,270,969, and claims 1 and 4 of U.S. Patent No. 5,517,449, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Toshiba Corporation, 1–1 Shibaura 1–Chome, Minato-KU, Tokyo 105–8001, Japan.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hynix Semiconductor, San 136–1, Ami-Ri Bubal-eub, 1chon-si, Kyoungki-do, Korea.

Hynix Semiconductor America, Inc., 3101 North First Street, San Jose, California 95134.

(c) Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: October 31, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–22017 Filed 11–3–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–401 (Review) and 731–TA–853 and 854 (Review)]

Structural Steel Beams from Japan and Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

DATES: Effective October 19, 2005.

FOR FURTHER INFORMATION CONTACT: Joann Tortorice (202–205–3032) or Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: Effective September 9, 2005, the Commission established a schedule for the conduct of the subject reviews (70 FR 54962, September 19, 2005). Subsequently, counsel for domestic interested parties requested that the Commission extend the date for filing prehearing briefs by two business days to alleviate the hardship placed on administrative personnel.[1] Counsel suggested no other

[1] Letter to the Secretary of the Commission from Wiley Rein & Fielding, on behalf of Nucor Corp., Nucor-Yamato Steel Co., Steel Dynamics, Inc., and

Continued

change to the schedule. Absent objection from any other party, the Commission is revising its schedule. The deadline for filing prehearing briefs is January 4, 2006. The Commission's original schedule is otherwise unchanged.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: October 31, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–22020 Filed 11–3–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–521]

Certain Voltage Regulator Circuits, Components Thereof and Products Containing Same; Notice of a Commission Determination Not to Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order and Settlement Agreement; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting the joint motion of complainant Linear Technology Corporation and respondent Monolithic Power Systems, Inc. to terminate the above-captioned investigation on the basis of a settlement agreement and consent order.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3115. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On August 17, 2004, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Linear Technology Corporation of Milpitas, California (''Linear'') alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain voltage regulator circuits, components thereof and products containing same by reason of infringement of claims 1–6, 31, 34–35, 41, 44–48, and 51–57 of U.S. Patent No. 5, 481,178 (''the '178 patent''), and claims 1–19, 31, 34, and 35 of U.S. Patent No. 6,580,258. 69 FR 51104 (August 17, 2004). The complainant named Monolithic Power Systems, Inc. (''MPS'') of Los Gatos, California as respondent.

On March 16, 2005, the ALJ issued an ID (Order No. 12) extending the target date in the above-referenced investigation until February 17, 2006. No party petitioned for review of the ID, the Commission declined to review it, and it therefore became the determination of the Commission. The ALJ issued another ID (Order No. 16), further extending the target date to June 14, 2006. No party petitioned for review of the ID, the Commission declined to review it, and it therefore became the determination of the Commission.

On September 30, 2005 Linear and MPS filed their ''Joint Motion to Terminate Investigation Based Upon a Settlement Agreement and Consent Order.'' On October 7, 2005, the Commission Investigative Staff filed a response in support of the joint motion. On October 14, 2005, the ALJ issued the subject ID terminating the investigation on the basis of a settlement agreement and consent order.

No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus has become the determination of the Commission pursuant to 19 CFR 210.42(h)(3).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Issued: October 31, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–22018 Filed 11–3–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–537]

Certain Weather Stations and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on Withdrawal of the Complaint

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') terminating the above-captioned investigation as to all the respondents on the basis of withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Chaparral Steel Company, dated September 25, 2005.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Richmond IP Holdings, LLC (''Richmond''), of Richmond, Virginia. 70 FR 19969 (April 15, 2005). Richmond alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain weather stations and components thereof by reason of infringement of claim 1 of U.S. Patent No. 5,978,738 and claims 26 and 30 of U.S. Patent No. 6,076,044 (''the '044 patent''). The complaint and notice of investigation named Hideki Electronics, Inc. of Tualatin, Oregon; Hideki Electronics, Ltd. of Hong Kong; Homedics-U.S.A., Inc. (''Homedics'') of Commerce Township, Michigan; K&P International Holdings Limited of Hong Kong; Springfield Precision Instruments, Inc. (''Springfield'') of Wood Ridge, New Jersey; and Taylor Precision Products, LLC (''Taylor'') of Oak Brook, Illinois as respondents.

On August 3, 2005, Richmond filed a motion to terminate the investigation in part requesting that it be permitted to withdraw the allegations regarding the '044 patent. On August 9, 2005, Richmond filed a motion for withdrawal of the entire complaint and termination of the investigation as to all the named respondents.

On August 15, 2005, respondents Hideki Electronics, Inc.; Hideki Electronics, Ltd.; and K&P International Holdings Limited filed a joint response supporting Richmond's motion but requesting that the ALJ issue sanctions against Richmond. On August 19, 2005, the Commission investigative attorney filed a response supporting Richmond's motion to withdraw while opposing sanctions.

On August 22, 2005, respondent Springfield filed a response opposing Richmond's motion to withdraw and terminate the investigation. Springfield also requested that the ALJ defer ruling on the motion so that the Commission could issue a show cause order to Richmond and condition any withdrawal on the payment of attorneys' fees and expenses. Respondents Homedics and Taylor did not file responses to Richmond's motion to withdraw.

On October 12, 2005, the ALJ issued an ID (Order No. 8) granting Richmond's motion for withdrawal of the complaint and termination of the investigation as to all the respondents. No petitions to review the ID were filed. The Commission has determined not to review this ID.

Issued: October 31, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–22019 Filed 11–3–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,118]

Innovion; Gresham, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 12, 2005 in response to a worker petition filed by a company official on behalf of workers at Innovion, Gresham, Oregon.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of October, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6136 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,926]

Avery Dennison Corporation; RVL Printed Labels, Statesville, NC; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 23, 2005, applicable to workers of Avery Dennison Corporation, Statesville, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of the company and the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of printed fabric labels.

New information shows that in November 2002, Avery Dennison Corporation purchased RVL Printed Labels and that workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for RVL Printed Labels, Statesville, 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 Avery Dennison Corporation who were adversely affected by a shift in production abroad.

The amended notice applicable to TA–W–57,926 is hereby issued as follows:

''All workers of Avery Dennison Corporation, RVL Printed Labels, Statesville, North Carolina, who became totally or partially separated from employment on or after September 9, 2004, through September 23, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 19th day of October 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6131 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,651]

Cerwin Vega, Inc.; a Florida Corporation; a Division of Stanton Magnetics, Inc.; Chatsworth, CA; 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 Cerwin Vega, Inc., A Florida Corporation, A Division of Stanton Magnetics, Inc., Chatsworth, California. 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–57,651; Cerwin Vega, Inc., a Florida Corporation, a Division of Stanton Magnetics, Inc., Chatsworth, California (October 20, 2005).

Signed at Washington, DC, this 26th day of October 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–6125 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of October 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W 57,963; Coopervision, Inc., Subsidiary of Cooper Companies, Huntington Beach, CA

TA–W 57,861; Hickory Springs Manufacturing, Covering Elastic Div., High Point, NC

TA–W 57,879; Legacy Manufacturing Co., dba West Coast Door, Tacoma, WA

TA–W 57,919; Sterling Printing, Inc., Thomasville, NC

TA–W 57,936; North American Container Corp., Lawrenceburg, TN

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W 57,837; Peters Manufacturing Co., Vassar, MI

TA–W 57,854; Honeywell Nylon, LLC, formerly BASF Corporation (Fibers Div.), Anderson, SC

TA–W 57,900; Tree Island Wire USA, Industrial Alloys Facility, Walnut, CA

TA–W 58,008; Inman Mills, Mt. Shoals Plant, Enoree, SC

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W 57,931; Geo Specialty Chemicals, Rubber and Plastics Division, Gibbstown, NJ

TA–W 57,834; Ashley Furniture Ind., Upholstery Division, Ecru, MS

TA–W 57,851; Conn-Selmer, Vincent Bach, Elkhart, IN

TA–W 58,021; Victaulic Company of America, Apex Div., New Village, NJ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W 57,905; Compass Group, Morrison, TN

TA–W 57,938; OAG Worldwide, Custom Products Department, Downers Grove, IL

TA–W 57,972; AT&T Telemarketing Distribution Services, Marietta, GA

TA–W 58,018; Miralba, Inc., New York City, NY

TA–W 58,048; S. Goldberg and Co., Inc., Hackensack, NJ

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

None

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W 57,826; Ultra-Pak, Inc., Greer, SC

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A)

(increased imports) of Section 222 have been met.

TA–W 57,931; Geo Specialty Chemicals, Rubber and Plastics Division, Gibbstown, NJ

TA–W 57,815; Swift and Company, Nampa, ID: 8/18/2004.

TA–W 57,817; Applied Color Systems, Inc., d/b/a/ Datacolor, Lawrenceville, NJ: 8/23/2004.

TA–W 57,819; Ceramic Magnetics, Inc., Fairfield, NJ: 8/23/2004.

TA–W 57,822; Rubbermaid home Products, Div. of Newell Rubbermaid, Goodyear, AZ: 8/19/2004.

TA–W 57,835; Laneko Engineering Co., Fort Washington, PA: 8/18/2004.

TA–W 57,835A; Laneko Precision Corporation, Montgomeryville, PA: 8/18/2004.

TA–W 57,839; American Glove Company, Inc., Comprehensive Services, Lyerly, GA: 8/24/2004.

TA–W 57,848; Boone International, Inc., Acco Brands, Corona, CA: 8/23/2004.

TA–W 57,850; Precision Engine Products Corporation, Windsor, CT: 8/26/2004.

TA–W 57,856,; Alstom Power, Inc., Heat Exchange Division, Easton, PA: 9/11/2005.

TA–W 57,864; Aroostook Starch Co., Ft. Fairfield, ME: 8/29/2004.

TA–W 57,876; Edelweiss Mfg. Co., Inc., Hickory, NC: 8/25/2004.

TA–W 57,906; Flexsteel, Dubuque Div., Dubuque, IA: 9/29/2004.

TA–W 57,925; Sligh Furniture Operating Company, d/b/a Sligh Furniture Co, Holland, MI: 10/8/2005.

TA–W 57,932; Sterling Trimmings Co., Jersey City, NJ: 9/12/2004.

TA–W 57,947; Laminating Specialties, Inc., Warren, RI: 8/26/2004.

TA–W 58,006; Baldwin Hardware Corporation, Reading, PA: 9/9/2004.

TA–W 58,014; Kern Manufacturing, Enfield, IL: 9/22/2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W 57,844; Borg Warner, Transmission Systems Div., Frankfort, IL: 9/29/2004.

TA–W 57,874; Levy Group (The), Sample Room, New York, NY: 9/1/2004.

TA–W 57,880; KeyTronicEMS, Spokane, WA: 8/31/2004.

TA–W 57,882; IWP Custom Doors, Jeld-Wen, Inc., Everett, WA: 8/30/2004.

TA–W 57,883; Invacare Corp., Elyria, OH: 9/1/2004.

TA–W 57,902; Xantrex Technolgoy, Inc., Terra Personnel Group, Arlington, WA: 9/7/2004.

TA–W 57,937; Continental Bag Company, Div. of Langston Companies, Crowley, LA: 8/25/2004.

TA–W 57,941; Ward Product, LLC, Subsidiary of Mid Mark Capital Partners, Amsterdam, NY: 9/6/2004.

TA–W 57,950; Eastman Wind Instrument, Inc., d/b/a Williams S. Haynes Co, Elkhart, IN: 9/12/2004.

TA–W 57,952; Paramount Cards, Inc., Paramount Card Holding Corp, Pawtucket, RI: 9/13/2004.

TA–W 57,981; Arvin Merritor, Inc., Chickasha, OK: 10/31/2005.

TA–W 58,046; Leybold Vacuum USA, Leybold Vacuum GMBH, Export, PA: 9/27/2004.

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

TA–W 57,827; Excellence Manufacturing, Inc., Grand Rapids, MI: 8/22/2004.

TA–W 57,999; Culp, Inc., Culp Extrusion, Graham, NC: 9/15/2004.

TA–W 58,012; Grover Industries, Inc., Grover Div., Grover, NC: 9/22/2004.

TA–W 58,012A; Grover Industries, Inc., Lynn Div., Lynn, NC: 9/22/2004.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W 57,848; Boone International, Inc., Acco Brands, Corona, CA

TA–W 58,006; Baldwin Hardware Corporation, Reading, PA

TA–W 57,822; Rubbermaid home Products, Div. of Newell Rubbermaid, Goodyear, AZ

TA–W 57,882; IWP Custom Doors, Jeld-Wen, Inc., Everett, WA

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W 57,839; American Glove Company, Inc., Comprehensive Services, Lyerly, GA

TA–W 57,941; Ward Product, LLC, Subsidiary of Mid Mark Capital Partners, Amsterdam, NY

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W 57,877A; TFL USA/Canada, Inc., Greensboro, NC

TA–W 57,885; Pliana, Inc., Div of Pliana, S.A. DE C.V., Charlotte, NC

TA–W 57,984; Sipex Corporation, Milpitas, CA

TA–W 57,817; Applied Color Systems, Inc., d/b/a/ Datacolor, Lawrenceville, NJ

TA–W 57,850; Precision Engine Products Corporation, Windsor, CT

TA–W 57,864; Aroostook Starch Co., Ft. Fairfield, ME

TA–W 57,906; Flexsteel, Dubuque Div., Dubuque, IA

TA–W 57,925; Sligh Furniture Operating Company, d/b/a Sligh Furniture Co, Holland, MI

TA–W 58,014; Kern Manufacturing, Enfield, IL

TA–W 57,815; Swift and Company, Nampa, ID

TA–W 57,819; Ceramic Magnetics, Inc., Fairfield, NJ

TA–W 57,835; Laneko Engineering Co., Fort Washington, PA

TA–W 57,835A; Laneko Precision Corporation, Montgomeryville, PA

TA–W 57,856; Alstom Power, Inc., Heat Exchange Division, Easton, PA

TA–W 57,876; Edelweiss Mfg. Co., Inc., Hickory, NC

TA–W 57,932; Sterling Trimmings Co., Jersey City, NJ

TA–W 57,880; KeyTronicEMS, Spokane, WA

TA–W 57,902; Xantrex Technolgoy, Inc., Terra Personnel Group, Arlington, WA

TA–W 57,937; Continental Bag Company, Div. of Langston Companies, Crowley, LA

TA–W 57,952; Paramount Cards, Inc., Paramount Card Holding Corp, Pawtucket, RI

TA–W 57,981; Arvin Merritor, Inc., Chickasha, OK

TA–W 57,874; Levy Group (The), Sample Room, New York, NY

TA–W 57,950; Eastman Wind Instrument, Inc., Inc., d/b/a Williams S. Haynes Co, Elkhart, IN

TA–W 58,046; Leybold Vacuum USA, Leybold Vacuum GMBH, Export, PA

TA–W 57,827; Excellence Manufacturing, Inc., Grand Rapids, MI

TA–W 57,999; Culp, Inc., Culp Extrusion, Graham, NC

TA–W 58,012; Grover Industries, Inc., Grover Div., Grover, NC
TA–W 58,012A; Grover Industries, Inc., Lynn Div., Lynn, NC
TA–W 57,931; Geo Specialty Chemicals, Rubber and Plastics Division, Gibbstown, NJ

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W 57,817; Applied Color Systems, Inc., d/b/a/ Datacolor, Lawrenceville, NJ: 8/23/2004.
TA–W 57,850; Precision Engine Products Corporation, Windsor, CT: 8/26/2004.
TA–W 57,864; Aroostook Starch Co., Ft. Fairfield, ME: 8/29/2004.
TA–W 57,906; Flexsteel, Dubuque Div., Dubuque, IA: 9/29/2004.
TA–W 57,925; Sligh Furniture Operating Company, d/b/a Sligh Furniture Co, Holland, MI: 10/8/2005.
TA–W 58,014; Kern Manufacturing, Enfield, IL: 9/22/2004.
TA–W 57,815; Swift and Company, Nampa, ID: 8/18/2004.
TA–W 57,819; Ceramic Magnetics, Inc., Fairfield, NJ: 8/23/2004.
TA–W 57,835; Laneko Engineering Co., Fort Washington, PA: 8/18/2004.
TA–W 57,835A; Laneko Precision Corporation, Montgomeryville, PA: 8/18/2004.
TA–W 57,856; Alstom Power, Inc., Heat Exchange Division, Easton, PA: 9/11/2005.
TA–W 57,876; Edelweiss Mfg. Co., Inc., Hickory, NC: 8/25/2004.
TA–W 57,932; Sterling Trimmings Co., Jersey City, NJ: 9/12/2004.
TA–W 57,880; KeyTronicEMS, Spokane, WA: 8/31/2004.
TA–W 57,902; Xantrex Technology, Inc., Terra Personnel Group, Arlington, WA: 9/7/2004.
TA–W 57,937; Continental Bag Company, Div. of Langston Companies, Crowley, LA: 8/25/2004.
TA–W 57,952; Paramount Cards, Inc., Paramount Card Holding Corp, Pawtucket, RI: 9/13/2004.
TA–W 57,981; Arvin Merritor, Inc., Chickasha, OK: 10/31/2005.
TA–W 57,874; Levy Group (The), Sample Room, New York, NY: 9/1/2004.
TA–W 57,950; Eastman Wind Instrument, Inc., d/b/a Williams S. Haynes Co, Elkhart, IN: 9/12/2004.
TA–W 58,046; Leybold Vacuum USA, Leybold Vacuum GMBH, Export, PA: 9/27/2004.
TA–W 57,827; Excellence Manufacturing, Inc., Grand Rapids, MI: 8/22/2004.
TA–W 57,999; Culp, Inc., Culp Extrusion, Graham, NC: 9/15/2004.
TA–W 58,012; Grover Industries, Inc., Grover Div., Grover, NC: 9/22/2004.
TA–W 58,012A; Grover Industries, Inc., Lynn Div., Lynn, NC: 9/22/2004.
TA–W 57,931; Geo Specialty Chemicals, Rubber and Plastics Division, Gibbstown, NJ: 9/2/2004.

I hereby certify that the aforementioned determinations were issued during the month of October 2005. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 26, 2005.

Douglas F. Small,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–6132 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,754A, TA–W–55,754E, TA–W–55,754F, TA–W–55,754G]

Dan River, Inc., 1325 Avenue of the Americas, New York, NY, Dan River, Inc., Dallas, TX; Dan River, Inc., Lake Forest, IL; Dan River, Inc., Hickory, 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. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 5, 2004, applicable to workers of Dan River, Inc., 1325 Avenue of The Americas, New York, New York. The notice was published in the **Federal Register** on December 9, 2004 (69 FR 71429). The certification was amended on February 16, 2005 to include workers at other locations of the subject firm. The notice was published in the **Federal Register** on March 9, 2005 (70 FR 11700–11701).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that workers located in Dallas, Texas, Lake Forest, Illinois, and Hickory, North Carolina, reporting to Dan River, Inc., 1325 Avenue of The Americas, New York, New York, have been separated from employment. These employees provided support services for the production of home furnishing textiles and apparel fabric produced by Dan River, Inc.

Based on these findings, the Department is amending this certification to include employees of Dan River, Inc., 1325 Avenue of the Americas, New York, New York, located in Dallas, Texas, Lake Forest, Illinois and Hickory, North Carolina.

The intent of the Department's certification is to include all workers of Dan River, Inc. who were adversely affected by a shift in production to China and Mexico.

The amended notice applicable to TA-W–55,754A is hereby issued as follows:

• ''All workers of Dan River, Inc., 1325 Avenue of The Americas, New York, New York (TA–W–55,754A), and employees of Dan River, Inc., 1325 Avenue of The Americas, New York, New York, located in Dallas, Texas (TA–W–55,754E), Lake Forest,

Illinois (TA–W–55,754F), and Hickory, North Carolina (TA–W–55,754G), who became totally or partially separated from employment on or after October 8, 2003, through November 5, 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 21st day of October 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6123 Filed 11–3–05; 8:45am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 14, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 14, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of October 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 10/11/05 AND 10/14/05

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58098	Northwest Airlines (Comp)	Anchorage, AK	10/11/05	10/08/05
58099	Wip-X Systems, Inc. (Comp)	Mansfield, GA	10/11/05	10/06/05
58100	US Electrical Motors (State)	Mena, AR	10/11/05	10/07/05
58101	Honeywell International (State)	Glendale, AZ	10/11/05	10/04/05
58102	H. Warshow and Sons, Inc. (Comp)	Milton, PA	10/11/05	10/07/05
58103	Panasonic Home Appliances Company (Wkrs)	Danville, KY	10/11/05	10/05/05
58104	MGS Manufacturing Group (Wkrs)	Germantown, WI	10/11/05	09/10/05
58105	Eastman Kodak Company (Comp)	Rochester, NY	10/11/05	10/10/05
58106	Seiko Optical Products of America, Inc. (State)	Hopkins, MN	10/11/05	10/07/05
58107	Century Furniture Industries (Comp)	Hickory, NC	10/11/05	10/10/05
58108	Lazy Pet Products (Comp)	Hazleton, PA	10/11/05	10/10/05
58109	Telespectrum, Inc. (Wkrs)	Salisbury, NC	10/11/05	09/30/05
58110	Molnlycke Health Care, Inc. (Comp)	El Paso, TX	10/11/05	10/05/05
58111	Fashion Dye Works, Inc. (Wkrs)	Ridgewood, NY	10/11/05	09/28/05
58112	IMC Products, Inc. (State)	Muskegon, MI	10/11/05	10/03/05
58113	Unifi (Wkrs)	Greensboro, NC	10/11/05	10/07/05
58114	Alcatel USA (Wkrs)	Plano, TX	10/12/05	10/03/05
58115	Amphenol Precision Cable Manufacturing (Wkrs).	Rockwall, TX	10/12/05	10/10/05
58116	Commscope, Inc. (Wkrs)	Scottsboro, AL	10/12/05	10/11/05
58117	George Weston Bakeries (Wkrs)	Bay Shore, NY	10/12/05	10/11/05
58118	Innovion (Comp)	Gresham, OR	10/12/05	10/11/05
58119	Cole Hersee Company (Comp)	So. Boston, MA	10/12/05	10/11/05
58120	Bangor Mills, Inc. (Comp)	Stroudsburg, PA	10/13/05	10/07/05
58121	Computernet, Inc. (Comp)	High Point, NC	10/13/05	10/10/05
58122	Select Staffing, Inc. (State)	Caro, MI	10/13/05	09/27/05
58123	Wright Plastic Products, LLC (State)	Sheridan, MI	10/13/05	10/10/05
58124	Victory Plastics International (Wkrs)	Haverhill, MA	10/13/05	10/12/05
58125	S. Lichtenberg and Co., Inc. (Comp)	Waynesboro, GA	10/13/05	10/12/05
58126	GDX Automotive (Comp)	Salisbury, NC	10/13/05	10/12/05
58127	Alaska Airlines (AMFA)	Seattle, WA	10/13/05	10/07/05
58128	Northwest Airlines (AMFA)	Eagan, MN	10/13/05	10/07/05
58129	United Airlines (AMFA)	Elk Grove Twp., IL	10/13/05	10/07/05
58130	ATA Airlines (AMFA)	Indianapolis, TN	10/13/05	10/07/05
58131	Quality Oak Products, Inc. (Wkrs)	Noble, IL	10/13/05	10/06/05
58132	Tibbetts Industries, Inc. (Comp)	Camden, MA	10/14/05	10/10/05
58133	Joan Fabrics (Comp)	Troy, NC	10/14/05	10/13/05
58134	Kemco, Inc. (Comp)	Travelers Rest, SC	10/14/05	10/13/05
58135	Snaptite, Inc. (State)	Compton, CA	10/14/05	10/13/05

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 10/11/05 AND 10/14/05—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58136	Hewlett Packard Co. (Wkrs)	Boise, ID	10/14/05	10/11/05

[FR Doc. E5–6135 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,078]

Kolpak-KMT Refrigeration; A Subsidiary of the Manitowoc Company, Inc.; River Falls, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 6, 2005 in response to a petition filed by a company official on behalf of workers at Kolpak-KMT Refrigeration, a subsidiary of The Manitowoc Company, Inc., River Falls, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of October, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6134 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,650]

Meromex USA, Inc.; El Paso, TX; 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 Meromex USA, Inc., El Paso, Texas. 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–57,650; Meromex USA, Inc., El Paso, Texas (October 25, 2005).

Signed at Washington, DC, this 26th day of October 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–6124 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,888]

Pentair Pump; Pentair South (Hydromatic); 1840 Baney Road, Ashland, OH; 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 Pentair Pump, Pentair South (Hydromatic), 1840 Baney Road, Ashland, Ohio. 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–57,888; Pentair Pump, Pentair South (Hydromatic), Ashland, Ohio (October 20, 2005).

Signed at Washington, DC, this 20th day of October 2005.

Douglas F. Small,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–6130 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,983]

SKF Sealing Solutions; SKF Automotive Division; Springfield, SD; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 20, 2005 in response to a petition filed by a company official on behalf of workers at SKF Sealing Solutions, SKF Automotive Division, Springfield, South Dakota.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of October, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6133 Filed 11–3–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–150]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite 6O75, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting approval for a new collection that will

be used to assess the safety culture of employees associated with simulation and flight-test activities at NASA Langley Research Center.

II. Method of Collection

NASA uses electronic methods to collection information from collection respondents.

III. Data

Title: Behavioral Science Technology (BST) Cultural Assessment of the Flight Research Services Directorate (FRSD) at NASA Langley.

OMB Number: 2700–.

Type of Review: New Collection.

Affected Public: Business or other for-profit; Federal Government.

Estimated Number of Respondents: 75.

Estimated Time Per Response: approximately 30 minutes.

Estimated Total Annual Burden Hours: 37.5.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

John W. McManus,

Deputy Chief Information Officer.

[FR Doc. 05–22065 Filed 11–3–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.053% (.00053) for tier 2 for calendar year 2005. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2005 shall be one-half of the annual fee rate, which is 0.0265% (.000265)

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers), or send Emails to: *Fees@NIGC.Gov.*

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indians lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the final rate being adopted today are effective for calendar year 2005. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by December 31, 2005.

Irene Schrader,

Director of Administration, National Indian Gaming Commission.

[FR Doc. 05–22063 Filed 11–3–05; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: :National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 19, 2005 the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on October 31, 2005 to: Mahlon C. Kennicutt, II; Permit No. 2006–021.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–22055 Filed 11–3–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978; Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 5, 2005. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2006–023

Applicant: Kam W. Tang, Virginia Institute of Marine Science, P.O. Box 1346, 1208 Greate Road, Gloucester Point, VA 23062.

Activity for Which Permit is Requested: Introduce non-indigenous species intor Antarctica. The applicant proposes to bring cultures of Phaeocystis antarctica (phystoplankton) in small viles to Antarctica for use in experiments in the Crary Science and Engineering Center at McMurdo Station. They will study the interactions between these samples and other phytoplankton organisms to be collected from McMurdo Sound.

Location: Crary Science and Engineering Center at McMurdo Station, Antarctica.

Dates: December 13, 2005 to February 28, 2006.

Permit Application No. 2006–024

2. *Applicant:* Walker O. Smith, Virginia Institute of Marine Science, P.O. Box 1346, 1208 Greate Road, Gloucester Point, VA 23062.

Activity for Which Permit is Requested: Introduce non-indigenous species into Antarctica. The applicant proposes to bring small flasks of phytoplanton species, *phaeocystis antarctica, Pseudo-nitzschia sp.,* and *fragilariopsis cylindurs* to Antarctica onboard the R/V Nathaniel B. Palmer for use in experiments. They plan to study the physiological response of these species to controlled environmental factors with onboard incubation.

Location: Ross Sea, Antarctica.

Dates: December 5, 2005 to February 29, 2006.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 05–22060 Filed 11–3–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Nine Mile Point Nuclear Station, LLC (NMPNS); Long Island Lighting Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of NMPNS (the licensee) to withdraw its April 1, 2005, application for proposed amendment to Facility Operating License No. NPF–69 for the Nine Mile Point Nuclear Station, Unit No. 2, located in Oswego County, New York.

The proposed amendment would have revised the Technical Specifications (TSs) pertaining to Required Action A.1 of TS 3.8.7, ''Inverters—Operating,'' to extend the Completion Time for one emergency uninterruptible power supply (UPS) inverter inoperable from 24 hours to 7 days. The associated Bases would also be changed to reflect the proposed TS change.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 10, 2005 (70 FR 24653). However, by letter dated September 30, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 1, 2005, and the licensee's letter dated September 30, 2005, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of October 2005.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–6118 Filed 11–3–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Elimination of Typical License Condition Requiring Reporting of Violations of Section 2.C of Operating License Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model application related to the elimination of the license condition that requires reporting of violations of other requirements (typically in License Condition 2.C) in the operating license of some commercial nuclear power plants. The purpose of this model is to permit the NRC to efficiently process amendments that propose to delete the reporting requirement from operating licenses. Licensees of nuclear power reactors to which the model applies may request amendments using the model application.

DATES: The NRC staff issued a **Federal Register** notice (70 FR 51098, August 29, 2005) that provided a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination relating to the elimination of the license condition that requires reporting of violations of other requirements (typically in License Condition 2.C) in operating licenses. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to adopt the changes. The NRC staff has posted a model application on the NRC Web site to assist licensees in using the consolidated line item improvement process (CLIIP) to delete the reporting requirement in operating licenses. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP includes an opportunity for the public to comment on proposed changes to operating licenses, including the technical specifications (TS), after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate

any comments received for a proposed generic change to operating licenses and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to operating licenses are responsible for reviewing the NRC staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves a change that deletes a requirement for licensees to report violations of other requirements (typically in License Condition 2.C) of a facility's operating license.

Applicability

This proposal to eliminate the reporting of violations of specific requirements (typically in License Condition 2.C) of facility operating licenses is applicable to any licensee that has such a provision in its facility operating license. The NRC staff notes that many operating licenses do not contain the requirement because it was never added or was removed by a license amendment before issuance of this notice. The CLIIP also addresses similar requirements if they exist in the Administrative Section of TS. The CLIIP does not address reporting requirements contained in operating licenses other than those specifically involving reports of violations of other requirements (typically in License Condition 2.C) of the facility operating license or requirements that restate the need to submit reports in accordance with 10 CFR 50.72, ''Immediate notification requirements for operating nuclear power reactors,'' and 10 CFR 50.73, ''Licensee event report system.''

To efficiently process the incoming license amendment applications, the NRC staff requests each licensee applying for the changes using the CLIIP to provide the information identified in the model application posted on the NRC Web site.

Public Notices

In a notice in the **Federal Register** dated August 29, 2005 (70 FR 51098), the NRC staff requested comment on the use of the CLIIP to process requests to delete the subject reporting requirement in operating licenses. In addition, there have been multiple notices published for plant-specific amendment requests to adopt changes similar to those described in this notice.

The NRC staff's SE and model application may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC Web site, (the Electronic Reading Room).

The NRC staff received two responses following the notice published August 29, 2005 (70 FR 51098), soliciting comments on the model SE and NSHC determination related to the elimination of the reporting requirement in operating licenses. The responses were from the Nuclear Energy Institute (NEI) in a letter dated September 28, 2005, and South Carolina Electric and Gas (SCE&G) in a letter dated September 26, 2005. Both letters supported the generic approach proposed in the notice and did not offer changes to the model SE or NSHC determination. The NRC staff finds that the previously published models remain appropriate references and has chosen not to republish the model SE and model NSHC determination in this notice. As described in the model application prepared by the NRC staff, licensees may reference in their plant-specific applications to delete the reporting requirement, the SE, NSHC determination, and environmental assessment previously published in the **Federal Register** (70 FR 51098; August 29, 2005).

Dated at Rockville, Maryland, this 25th day of October 2005.

For the Nuclear Regulatory Commission.

William D. Reckley,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–6119 Filed 11–3–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medicare.

(2) *Form(s) submitted:* AA–6, AA–7, AA–8, RL–311-F.

(3) *OMB Number:* 3220–0082.

(4) *Expiration date of current OMB clearance:* 12/31/2005.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,040.

(8) *Total annual responses:* 1,040.

(9) *Total annual reporting hours:* 165.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The forms in the collection obtain information needed to enroll non-retired employees and survivor applicants in the plan and also obtain information from railroad employers needed to determine if a railroad retirement beneficiary is entitled to a special enrollment period when applying for supplemental medical coverage under Medicare.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–21979 Filed 11–3–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14335]

Issuer Delisting; Notice of Application of Del Monte Foods Company To Withdraw its Common Stock, $.01 Par Value, From Listing and Registration on the Pacific Exchange, Inc.

October 31, 2005.

On September 28, 2005, Del Monte Foods Company, a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of

1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''Board'') of the Issuer approved resolutions on June 30, 2005 to withdraw the Security from the PCX. The Issuer stated that the Board determined to withdraw the Security from PCX to reduce the cost and compliance efforts of maintaining the listing because: (i) Approximately 99% of the trading volume in the Security is effected on the New York Stock Exchange, Inc. (''NYSE'') and only 1% is effected on PCX; and (ii) maintaining the listing on PCX involves cost and compliance efforts that are not warranted in light of the trading volume of the Security on PCX.

The Issuer stated in its application that it has complied with the applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Security from listing on PCX and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before November 21, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–14335 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–14335. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6122 Filed 11–3–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Notice of Application of Sunoco, Inc. To Withdraw Its Common Stock, $1.00 par value, From Listing and Registration on the Philadelphia Stock Exchange, Inc. File No. 1–06841

October 31, 2005.

On October 3, 2005, Sunoco, Inc., a Pennsylvania corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $1.00 par value (''Security''), from listing and registration on the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved resolutions on September 1, 2005 to withdraw the Security from listing on the Exchange. The Issuer stated that the following reasons factored into the Board's decision to withdraw the Security from Phlx: (i) The Issuer maintains the principal listing for the Security on the New York Stock Exchange (''NYSE''); (ii) since the Sarbanes-Oxley Act of 2002, new, more stringent corporate governance rules have been adopted by various exchanges, including NYSE and Phlx; (iii) maintaining multiple listings and compliance with the rules and disclosure requirements of both NYSE and Phlx requires administrative time and internal costs; and (iv) the benefits of continued listing on Phlx are outweighed by the administrative burden and internal cost of such listing.

The Issuer stated in its application that it has complied with the requirements of Phlx Rule 809 governing an issuer's voluntary withdrawal of a security from listing and registration by providing the required documents for withdrawal from Phlx. The Issuer's application relates solely to the withdrawal of the Security from listing on Phlx, and shall not affect its continued listing on NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before November 21, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Phlx, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–06841 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–06841. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/delist.shtml).* Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6121 Filed 11–3–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27137]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

October 28, 2005.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2005. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 2005, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE.,Washington, DC 20549–9303.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–0504.

Security Capital Real Estate Mutual Funds Incorporated [File No. 811–8033]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 18, 2005, applicant transferred its assets to JP Morgan U.S. Real Estate Fund, a series of JP Morgan Trust II, based on net asset value. Expenses of $850,000 incurred in connection with the reorganization were paid by applicant's investment adviser, Security Capital Research & Management Incorporated, or its affiliates.

Filing Date: The application was filed on September 29, 2005.

Applicant's Address: 10 South Dearborn St., Suite 1400, Chicago, IL 60603.

Valor Investment Fund, Inc. [File No. 811–2850]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 25, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $43,000 incurred in connection with the liquidation will be paid by applicant. Applicant has retained approximately $200,000 in cash to pay expenses associated with its liquidation and dissolution. Any funds remaining after expenses and liabilities are paid will be distributed to shareholders on a pro rata basis.

Filing Dates: The application was filed on September 13, 2005, and amended on October 12, 2005.

Applicant's Address: 2290 First National Building, Detroit, MI 48226.

Phoenix Strategic Allocation Fund (formerly Phoenix Oakhurst Strategic Allocation Fund, Phoenix Oakhurst Strategic Allocation Fund, Inc., Phoenix Strategic Allocation Fund, Inc. and Phoenix Total Return Fund) [File No. 811–1442]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 29, 2005, applicant transferred its assets to Phoenix Balanced Fund, a series of Phoenix Series Fund, based on net asset value. Expenses of $48,597 incurred in connection with the reorganization were paid by Phoenix Investment Partners, Ltd., which is a wholly owned subsidiary of applicant's and the acquiring fund's investment adviser.

Filing Dates: The application was filed on September 7, 2005, and amended on October 11, 2005.

Applicant's Address: 101 Munson St., Greenfield, MA 01301.

Co-operative Bank Investment Fund d/b/a Bank Investment Fund [File No. 811–4421]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 29, 2005, applicant transferred its assets to corresponding series of Asset Management Fund, based on net asset value. Expenses of $90,000 incurred in connection with the reorganization were paid by applicant and Shay Assets Management, Inc., the acquiring fund's investment adviser.

Filing Dates: The application was filed on September 1, 2005, and amended on October 6, 2005.

Applicant's Address: 75 Park Plaza, Boston, MA 02116.

Nuveen Massachusetts Dividend Advantage Municipal Fund 2 [File No. 811–21155]

Nuveen Virginia Dividend Advantage Municipal Fund 3 [File No. 811–21542]

Nuveen Connecticut Dividend Advantage Municipal Fund 4 [File No. 811–21543]

Nuveen Arizona Dividend Advantage Municipal Fund 4 [File No. 811–21544]

Nuveen California Municipal High Income Opportunity Fund [File No. 811–21545]

Nuveen North Carolina Dividend Advantage Municipal Fund 4 [File No. 811–21551]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on September 21, 2005.

Applicants' Address: 333 West Wacker Dr., Chicago, IL 60606.

BACAP Opportunity Strategy, LLC [File No. 811–21063]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 29, 2005, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $195,981 incurred in connection with the liquidation were paid by applicant. Applicant has retained approximately $464,241 in cash to pay outstanding liabilities of that amount.

Filing Dates: The application was filed on July 11, 2005, and amended on September 29, 2005.

Applicant's Address: 101 South Tryon St., Charlotte, NC 28255.

Fairport Funds [File No. 811–8774]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 12, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $11,766 incurred in connection with the liquidation were paid by applicant and

[4] 17 CFR 200.30–3(a)(1).

its investment adviser, Roulston & Company, Inc.

Filing Date: The application was filed on October 11, 2005.

Applicant's Address: 3636 Euclid Ave., Cleveland, OH 44115.

INVESCO Variable Investment Funds, Inc. [File No. 811–8038]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2004, applicant transferred its assets to AIM Variable Insurance Funds, based on net asset value. Expenses of $784,640 incurred in connection with the reorganization were paid by applicant and applicant's investment adviser, INVESCO Funds Group, Inc.

Filing Dates: The application was filed on May 6, 2005, and amended on August 9, 2005.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

WT Investment Trust I [File No. 811–8067]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 1, 2005, each of applicant's series made a liquidating distribution in kind to its feeder funds, based on net asset value. Expenses of $13,205 incurred in connection with the liquidation were paid by applicant's respective feeder funds.

Filing Date: The application was filed on October 14, 2005.

Applicant's Address: 1100 North Market, Wilmington, DE 19890.

John Hancock Variable Series Trust [File No. 811–4490]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 29, 2005, Applicant made a distribution of its assets in connection to its shareholders in connection with its merger with John Hancock Trust. Expenses of $3,436,531 were incurred in connection with the merger. These expenses were generally allocated among and paid by each portfolio of Applicant (''Acquired Fund'') and the portfolio of John Hancock Trust into that portfolio of Applicant was merged (''Acquiring Fund'') on an asset weighted basis, with the Acquired and Acquiring Fund in any combination bearing the expenses of that combination in proportion to their relative net assets as of June 30, 2004.

Filing Dates: The application was filed on August 3, 2005.

Applicant's Address: John Hancock Life Insurance Company, 601 Congress Street, Boston, Massachusetts 02210.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6106 Filed 11–3–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28051]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 28, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 22, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 22, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

FirstEnergy Corp., et al. (70–10322)

FirstEnergy Corp., (''FirstEnergy''), a registered holding company; and certain of its public utility subsidiaries: Ohio Edison Company, an Ohio corporation (''Ohio Edison''); The Cleveland Electric Illuminating Company, an Ohio corporation (''Cleveland Electric''); The Toledo Edison Company, an Ohio corporation (''Toledo Edison''); and Pennsylvania Power Company, a Pennsylvania corporation and wholly owned subsidiary of Ohio Edison, (''Penn Power''; Ohio Edison, Cleveland Electric, Toledo Edison and Penn Power collectively referred to as ''Utility Subsidiaries''); and FirstEnergy Nuclear Generating Corp. (''FE Nuclear''), a newly-incorporated Ohio corporation that would become a public utility subsidiary of FirstEnergy, all of 76 South Main Street, Akron, Ohio 44308, have filed an application-declaration, as amended (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d), and 12(f) of the Act and rules 43, 44, 45, 46 and 54 under the Act. FirstEnergy, the Utility Subsidiaries and FE Nuclear are referred to as ''Applicants.''

FirstEnergy directly owns all of the outstanding common stock of Ohio Edison, Cleveland Electric, Toledo Edison, and indirectly through Ohio Edison owns all of the outstanding common stock of Penn Power.[1] Ohio Edison was organized under the laws of the State of Ohio in 1930 and owns property and does business as an electric public utility in that state. Ohio Edison also has ownership interests in certain generating facilities located in the Commonwealth of Pennsylvania. Ohio Edison engages in the generation, distribution and sale of electric energy to communities in a 7,500 square mile area of central and northeastern Ohio having a population of approximately 2.8 million.

Ohio Edison owns all of Penn Power's outstanding common stock. Penn Power was organized under the laws of the Commonwealth of Pennsylvania in 1930 and owns property and does business as an electric public utility in that state. Penn Power engages in the generation, distribution and sale of electric energy in a 1,500 square mile-area of western Pennsylvania having a population of approximately 300,000. Penn Power is also authorized to do business and owns property in the State of Ohio.

Cleveland Electric was organized under the laws of the State of Ohio in 1892 and does business as an electric public utility in that state. Cleveland Electric engages in the generation, distribution and sale of electric energy in an area of approximately 1,700 square miles in northeastern Ohio having a

[1] FirstEnergy's other public utility subsidiaries are Jersey Central Power & Light Company, Pennsylvania Electric Company, Metropolitan Edison Company, York Haven Power Company, The Waverly Electric Power & Light Company and American Transmission Systems, Incorporated. These companies are not applicants in this proceeding.

population of approximately 1.9 million. It also has ownership interests in certain generating facilities located in Pennsylvania.

Toledo Edison was organized under the laws of the State of Ohio in 1901 and does business as an electric public utility in that state. Toledo Edison engages in the generation, distribution and sale of electric energy in an area of approximately 2,500 square miles in northwestern Ohio having a population of approximately 800,000. It also has interests in certain generating facilities located in Pennsylvania.

Requested Authorization

The Utility Subsidiaries are requesting authorization to transfer ownership of their respective interests in certain nuclear generating plants and related assets and liabilities to FE Nuclear. These asset transfers are in furtherance of FirstEnergy's Ohio and Pennsylvania corporate separation plans, which were described in FirstEnergy's application/declaration for authorization to merge with GPU, Inc. (''GPU'').[2] In addition, FirstEnergy and FE Nuclear are requesting authorization to engage in financing and other related transactions for the period through February 8, 2006 (the ''Authorization Period'').

Transfer of Nuclear Generating Plants to FE Nuclear

The Utility Subsidiaries own, as tenants in common, interests in the following nuclear generating plants:

Plant	Location	MW	Ownership %
Beaver Valley 1	Shippingport, PA	821	Ohio Edison 35%; Penn Power 65%.
Beaver Valley 2	Shippingport, PA	831	Ohio Edison 20.22%; Penn Power 13.74%; Cleveland Electric 24.47%; Toledo Edison 1.65%.
Davis-Besse	Oak Harbor, OH	883	Cleveland Electric 51.38%; Toledo Edison 48.62%.
Perry	North Perry Village, OH	1,260	OES Nuclear 17.42%; Penn Power 5.245%; Toledo Edison 19.91%; Cleveland Electric 44.85%.

The Utility Subsidiaries propose to sell or otherwise transfer their respective ownership interests in the nuclear plants to FE Nuclear by means of the following transactions, all of which would be carried out concurrently:[3]

Transfer of Nuclear Plants by Penn Power. Pursuant to the terms of a Subscription and Capital Contribution Agreement (''Penn Power Contribution Agreement''), Penn Power would acquire 100 shares of common stock of FE Nuclear in consideration for Penn Power's contribution to FE Nuclear of its undivided interests in the two Beaver Valley units and Beaver Valley common facilities and its undivided interest in Perry Unit 1, together with associated decommissioning funds. In connection with such contribution, FE Nuclear would assume Penn Power's obligations in respect of $64 million aggregate principal amount of pollution control revenue bonds (''PCRBs'') and certain other liabilities associated with the transferred units. The parties to the Penn Power Contribution Agreement have agreed that the value of the contributed assets would be the net book value thereof as of the end of the fiscal quarter immediately preceding the closing. Simultaneously, Penn Power would receive from FE Nuclear a promissory note (''FE Nuclear Note'') in respect of the book value of certain related assets, including construction work in progress, nuclear fuel, inventories and spare parts and accounts receivable, determined as of the end of the quarter immediately preceding the closing. The FE Nuclear Note would bear interest at a rate equal to Penn Power's weighted average cost of long-term debt, would mature 20 years after its date of issuance, and would be prepayable at any time, in whole or in part, by FE Nuclear.[4]

Transfer of Nuclear Plants by Ohio Edison. Pursuant to the terms of a Capital Contribution Agreement (''Ohio Edison Contribution Agreement''), Ohio Edison would contribute its undivided interests in the two Beaver Valley units and Beaver Valley common facilities and the common stock of OES Nuclear Incorporated (''OES Nuclear''), a wholly-owned subsidiary of Ohio Edison, which holds an undivided interest in Perry Unit 1, together with associated decommissioning funds and its interests in other assets, inventories, fuel, spare parts, equipment, supplies and contract rights relating to the transferred units, to FE Nuclear as an additional capital contribution to FE Nuclear. In connection with such transfer, FE Nuclear would assume Ohio Edison's obligations in respect of $116 million aggregate principal amount of PCRB obligations and certain other liabilities associated with the transferred units. An additional $295 million of Ohio Edison's PCRBs are expected to be assumed by FE Nuclear after the distribution described in the next paragraph. The parties to the Ohio Edison Contribution Agreement have agreed that the value of the contributed assets would be the net book value thereof as of the end of the fiscal quarter immediately preceding the closing.

Following the transfer of Ohio Edison's nuclear assets to FE Nuclear, Applicants state that it is anticipated that OES Nuclear would be merged with and into FE Nuclear, and Ohio Edison would distribute the stock of FE Nuclear as a dividend to its parent, FirstEnergy, such that FE Nuclear would become a direct wholly-owned subsidiary of FirstEnergy.

If the transactions described above had occurred on March 31, 2005, Applicants represent that Ohio Edison's cost basis for the stock of FE Nuclear would have been equal to the net book value of the transferred interests in the Beaver Valley and Perry units and associated assets (approximately $712 million), less the initial PCRB obligations to be assumed ($116 million)

[2] See HCAR No. 27459 (October 29, 2001).

[3] The Utility Subsidiaries do not propose to transfer to FE Nuclear their remaining percentage ownership interests in certain of the nuclear facilities that are currently subject to sale and leaseback arrangements with third parties

[4] Following the contribution to FE Nuclear, Penn Power would distribute the stock of FE Nuclear as a dividend to its parent, Ohio Edison, such that FE Nuclear would become, momentarily, a direct wholly-owned subsidiary of Ohio Edison. If the transactions described in the previous paragraph had occurred on March 31, 2005, Applicants state that Penn Power's cost basis for the stock of FE Nuclear would have been equal to the net book value of the transferred interests in the Beaver Valley and Perry units and associated assets (approximately $542 million), less the PCRB obligations ($64 million) and agreed upon value of other liabilities assumed by FE Nuclear (approximately $401 million), and the distribution of the stock of FE Nuclear to Ohio Edison would have resulted in a charge to Penn Power's retained earnings of $77 million.

and the agreed upon value of other liabilities assumed by FE Nuclear (approximately $596 million), resulting in no charge to Ohio Edison's retained earnings.

Sale of Nuclear Plants by Cleveland Electric and Toledo Edison. Cleveland Electric and Toledo Edison have each entered into a Nuclear Purchase and Sale Agreement with FE Nuclear (''Nuclear PSA''), under which FE Nuclear has agreed to purchase Cleveland Electric's and Toledo Edison's respective undivided ownership interests in Beaver Valley Unit 2, Perry Unit 1 and Davis-Besse for a purchase price equal to the net book value thereof, determined as of the end of the fiscal quarter immediately preceding the closing, together with the respective interests of Cleveland Electric and Toledo Edison in nuclear decommissioning trust funds associated with those plants and their respective right, title and interest in and to all contracts, fuel, spare parts, inventories, equipment, supplies and other assets associated with each transferred unit, less the amount of obligations of Cleveland Electric and Toledo Edison under PCRBs associated with the transferred units ($367 million and $284 million, respectively, at March 31, 2005), and the agreed upon value of certain other liabilities associated with the transferred units.

At closing, FE Nuclear would pay the purchase price, determined as described in the previous paragraph, by delivering to Cleveland Electric and Toledo Edison FE Nuclear Notes secured by a lien on the transferred assets. Each FE Nuclear Note would bear interest at a rate per annum based on the average weighted cost of long-term debt of Cleveland Electric and Toledo Edison, as the case may be, would mature 20 years after the date of issuance, and would be prepayable at any time, in whole or in part, at the option of FE Nuclear, without penalty.[5]

Repurchases of Common Stock of Cleveland Electric, Toledo Edison and Penn Power. FirstEnergy states that, in connection with the transfer of the nuclear plants to FE Nuclear, FirstEnergy would make a cash capital contribution to FE Nuclear of up to $700 million. FE Nuclear would use the proceeds of this investment at or subsequent to closing to prepay a like amount of the FE Nuclear Notes delivered at closing to Penn Power, Cleveland Electric and Toledo Edison. In turn, Penn Power, Cleveland Electric and Toledo Edison would apply the proceeds of such prepayment of the FE Nuclear Notes to repay outstanding borrowings under the FirstEnergy system utility money pool. To the extent that there are any remaining prepayment proceeds, the Applicants request authorization for Cleveland Electric and Toledo Edison to repurchase shares of their common stock that are held by FirstEnergy and Penn Power requests authorization to repurchase shares of its common stock that are held by Ohio Edison. Applicants state that the purpose of these transactions is to adjust (*i.e.*, reduce) the equity and debt capitalization of Cleveland Electric, Toledo Edison and Penn Power to mirror their smaller asset base after the transfer of their undivided interests in the nuclear plants to FE Nuclear.

Financing by FE Nuclear

External Debt Financing by FE Nuclear. FE Nuclear is requesting authorization to issue and sell to unaffiliated lenders, from time to time during the period through the Authorization Period, long-term debt securities having maturities of up to 50 years (''Long-term Debt'') and short-term debt securities having maturities of less than one year (''Short-term Debt'') in an aggregate amount at any time outstanding not to exceed $1.5 billion (the ''FE Nuclear Debt Limit''). The following general terms would be applicable where appropriate to Long-term Debt and Short-term Debt of FE Nuclear:

(a) *Effective Cost of Money.* The effective cost of capital (*i.e.*, the aggregate of all payments, including interest, dividend distributions and other periodic payments) in respect of Long-term Debt and Short-term Debt of FE Nuclear would not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; *provided* that, in no event would the effective cost of capital (i) on Long-term Debt exceed at the time of issuance 500 basis points over the yield to maturity of comparable-term U.S. Treasury securities if the interest rate on such Long-term Debt securities is a fixed rate or, if the rate on such Long-term Debt securities is a floating rate, 500 basis points over the London Interbank Offered Rate (''LIBOR'') for maturities of less than one year; and (ii) on Short-term Debt exceed at the time of issuance, (A) in the case of commercial paper or any other short-term borrowing that is not tied to a reference rate, 300 basis points over LIBOR, and (B) in the case of any short-term borrowing that is tied to a reference rate, either (1) 300 basis points over LIBOR, (2) 50 basis points over the prime rate, as announced from time to time by CitiBank, or any successor thereto, or (3) 100 basis points over the Federal Funds Rate, whichever reference rate is applicable.

(b) *Issuance Expenses.* The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of any security (not including any original issue discount) would not exceed 5% of the principal or total amount of the security being issued.

(c) *Use of Proceeds.* The proceeds from the sale of securities in external financing transactions would be used for general corporate purposes, including financing, in part, of the capital expenditures of FE Nuclear, financing of working capital requirements of FE Nuclear, the acquisition, retirement or redemption of securities (including PCRB obligations) previously issued by or on behalf FE Nuclear, and other lawful purposes.

(d) *Common Equity Ratio.* FE Nuclear and each of the Utility Subsidiaries commits that it would maintain common equity as a percentage of consolidated capitalization (common stock equity, long-term debt and short-term debt, including current maturities of long-term debt) at 30% or higher.

(e) *Ratings Event.* With respect to the securities issuance for which authorization is requested: (a) Within four business days after the occurrence of a Ratings Event,[6] Applicants would notify the Commission of its occurrence (by means of a letter, via fax, e-mail or overnight mail to the Office of Public Utility Regulation), and (b) within 30 days after the occurrence of a Ratings Event, Applicants would submit a post-effective amendment to this Application explaining the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of

[5] If the transactions described above had been consummated at March 31, 2005, Applicants state that the principal amounts of the FE Nuclear Notes delivered to Cleveland Electric and Toledo Edison would have been approximately $469 million and $307 million, respectively.

[6] A ''Ratings Event'' will be deemed to have occurred if, during the Authorization Period, (i) any security issued by FE Nuclear or FirstEnergy upon original issuance, if rated, is rated below investment grade, or (ii) any outstanding security of FirstEnergy or FE Nuclear that is rated is downgraded below investment grade. For purposes of this provision, a security will be deemed ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 of the Securities Exchange Act of 1934, as amended).

investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for FE Nuclear to issue the securities for which authorization has been requested, so long as FE Nuclear continues to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in this Application). Furthermore, except in accordance with a further order of the Commission, no such securities would be issued following the 60th day after a Ratings Event (other than Short-term Debt) if the downgraded rating(s) has or have not been upgraded to investment grade. Applicants request that the Commission reserve jurisdiction, through the remainder of the Authorization Period, over the issuance of any securities (other than Short-term Debt) that FE Nuclear is prohibited from issuing as a result of the occurrence of a Ratings Event if no revised rating reflecting an investment grade rating has been issued.

Description of Specific Types of External Debt Securities of FE Nuclear

Long-term Debt. Each series of Long-term Debt would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as FE Nuclear may determine at the time of issuance. Any Long-term Debt (a) may be secured or unsecured, (b) may be senior or subordinated, (c) would have maturities ranging from one to 50 years, (d) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (e) may be entitled to mandatory or optional sinking fund provisions, (f) may provide for reset of the coupon pursuant to a remarketing arrangement, (g) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (h) may be called from existing investors by a third party, and (i) may be entitled to the benefit of affirmative or negative financial or other covenants.

Long-term Debt may also be in the form of agreements between FE Nuclear and one or more industrial development authorities (''IDAs'') pursuant to which an IDA agrees to issue PCRBs for the purpose of financing or refinancing pollution control revenue facilities relating to FE Nuclear's nuclear power plants. Under the terms of any such agreement, payments to the issuing IDA would be designed to match payments of principal of and interest on the PCRBs to which such agreement relates.

As security for FE Nuclear's obligations under any agreement relating to any series of PCRBs, FE Nuclear requests authority to (1) issue its promissory note or notes to evidence the loan to FE Nuclear of the proceeds of the PCRBs by the issuing IDA, (2) acquire and deliver a letter of credit (''LOC'') guaranteeing payment of the PCRBs and enter into reimbursement agreements with respect to any such LOC, (3) acquire insurance policies guaranteeing payment of the PCRBs, and/or (4) pledge its first mortgage bonds as collateral for its obligations to the issuing IDA, any trustee, LOC bank or PCRB insurer. To avoid double counting, FE Nuclear proposes that the amount of any note or notes issued by FE Nuclear to evidence the loan to FE Nuclear of the proceeds of any PCRBs or first mortgage bonds issued by FE Nuclear as collateral security for PCRB obligations not count against the FE Nuclear Debt Limit.

Short-term Debt. Short-term Debt of FE Nuclear may be in the form of commercial paper, promissory notes and/or other forms of unsecured short-term indebtedness. FE Nuclear may establish from time to time new committed bank lines of credit, provided that only the principal amount of any outstanding borrowings would be counted against the proposed FE Nuclear Debt Limit. Credit lines may be set up for use by FE Nuclear for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. FE Nuclear would borrow and repay under such lines of credit, from time to time, as it is deemed appropriate or necessary. FE Nuclear may also engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

Commercial paper would be sold in established domestic or European commercial paper markets from time to time. Such commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from FE Nuclear would reoffer such paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

Intrasystem Financing Transactions. FE Nuclear further requests authorization to make direct long-term and short-term borrowings from FirstEnergy (''Direct Borrowings''). All such Direct Borrowings would be evidenced by FE Nuclear's promissory notes and would be prepayable at any time without premium or penalty at FE Nuclear's option. The aggregate principal amount of Direct Borrowings by FE Nuclear at any time outstanding would be counted against and would in no event exceed the FE Nuclear Debt Limit. The interest rate and maturity of any Direct Borrowings would be designed to parallel the terms (*i.e*, effective cost of funds and maturity) of similar debt securities issued by FirstEnergy, as authorized by the Commission by order dated June 30, 2003 (HCAR No. 27694) (the ''2003 Financing Order'').

In addition, FE Nuclear requests authorization to become a participant in and to make borrowings under the FirstEnergy system nonutility money pool agreement (''Nonutility Money Pool'') subject to terms and conditions previously approved by the Commission in the 2003 Financing Order.[7] FE Nuclear requests authorization to borrow up to $1 billion at any time outstanding under the Nonutility Money Pool. Borrowings by FE Nuclear under the Nonutility Money Pool would also be counted against the proposed FE Nuclear Debt Limit.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6105 Filed 11–3–05; 8:45 am]

BILLING CODE 8010–01–P

[7] Under the 2003 Financing Order, FirstEnergy is authorized to maintain and make loans to its nonutility subsidiaries through the Nonutility Money Pool.

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Quarterly and Strategic Planning meeting.

DATES: November 16, 2005—1:30 p.m. to 6 p.m., November 17, 2005—9 a.m. to

5:30 p.m., November 18, 2005—9 a.m. to 12 p.m.

ADDRESSES: Sheraton Miami Mart Hotel, 711 NW 72nd Avenue, Miami, FL 33126.

SUPPLEMENTARY INFORMATION:

Type of meeting: On November 16–18, 2005, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a quarterly meeting open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings and presentations on matters of interest, conduct full Panel deliberations on the implementation of the Act and receive public testimony.

The Panel will meet in person commencing on Wednesday, November 16, 2005, from 1:30 p.m. until 6 p.m. The quarterly meeting will continue on Thursday, November 17, 2005, from 9 a.m. until 5:30 p.m. The meeting will continue on Friday, November 18, 2005, from 9 a.m. until 12 p.m.

Agenda: Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Public testimony will be heard on Thursday, November 17, 2005, from 9 a.m. until 10 a.m. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule a time slot. Each presenter will be acknowledged by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute, verbal presentation. Full written testimony on the Implementation of the Ticket to Work and Work Incentives Program, no longer than five (5) pages, may be submitted in person or by mail, fax or e-mail on an ongoing basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Ms. Shirletta Banks, at *Shirletta.Banks@ssa.gov* or by calling (202) 358–6430.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the starting date or can be received, in advance, electronically or by fax upon request.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

- Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Debra Tidwell-Peters at (202) 358–6430.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov*.

Dated: October 31, 2005.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. 05–22048 Filed 11–3–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 21, 2005

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–22741.

Date Filed: October 17, 2005.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Passenger Tariff Coordinating Conferences. Geneva and Teleconference, 26–28 September 2005. TC23/123 Europe-South East Asia Expedited Resolution 002ap. Intended effective date: 15 December 2005.

Docket Number: OST–2005–22743.

Date Filed: October 17, 2005.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Passenger Tariff Coordinating Conferences. Geneva and Teleconference, 26–28 September 2005. TC23/123 Europe-South East Asia Expedited Resolution 002ap. Intended effective date: 15 December 2005.

Docket Number: OST–2005–22744.

Date Filed: October 17, 2005.

Parties: Members of the International Air Transport Association.

Subject: MAIL VOTE NUMBER S 083. RP 724c Notice of Liability Limitations—Neutral Air. Carrier Liability for Passengers and their Baggage—EC. Regulation 889/2002. Intended effective date: 1 November 2005.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–22021 Filed 11–3–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity And Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During The Week Ending October 21, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–22750.

Date Filed: October 17, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 7, 2005.

Description: Application of Capital Cargo International Airlines, Inc. requesting a permanent certificate of public convenience and necessity to authorize it to engage in foreign scheduled air transportation of property and mail between Toledo, OH, on the

one hand, and Saltillo, Guadalajara, and Monterrey, Mexico, on the other.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–22022 Filed 11–3–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Draft Environmental Impact Statement: Loudon, Anderson, and Knox Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare a Supplemental Draft Environmental Impact Statement in cooperation with the Tennessee Department of Transportation (TDOT) for Route 475 (Knoxville Parkway) in Loudon, Knox, and Anderson Counties, Tennessee. This project is intended to improve regional and national transportation needs.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Boyd, P.E., Field Operations Team Leader, Federal Highway Administration—Tennessee Division Office, 640 Grassmere Park Road, Suite 112, Nashville, TN 37211.

SUPPLEMENTARY INFORMATION: The U.S. Department of Transportation Federal Highway Administration (FHWA), in cooperation with the Tennessee Department of Transportation (TDOT), intends to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the Route 475 (Knoxville Parkway).

A Draft Environmental Impact Statement (DEIS) FHWA–EIS–(TN–EIS–01–02–D) for the project was approved and released for public review in December 2001. The original DEIS contained analysis of three alternative alignments, called the Blue, Orange, and Green Alternatives. Based on the findings of the DEIS and comments provided by the public, TDOT identified the Orange Alternative as the preferred alignment to carry forward in the Final Environmental Impact Statement. The proposed project corridor begins at Interstate 75 (I–75) approximately 5.8 miles southwest of the I–40/I–75 merge southwest of Knoxville near Lenoir City. From this location, the corridor extends in a northeasterly direction to I–75 approximately 3.0 miles northwest of the I–75/SR–61 interchange, north of Knoxville near the City of Norris.

Since the DEIS was approved, the alternatives development and screening process for the Route 475 project has continued through the Context Sensitive Solutions (CSS) process (*http://www.knoxvilleparkway.com*). The CSS process identified two new alternatives that follow the general alignment of the original Orange alternative, but have been shifted at various locations based primarily on input from the CSS team. Furthermore, the number and type of access points along the corridor have been modified on these two alternatives. The purpose of the SDEIS is to develop and study these two new alternatives.

Letters describing the proposed NEPA study and soliciting input will be sent to the appropriate Federal, State, and local agencies that have expressed or are known to have an interest or legal role in this proposal. Private organizations, citizens, and interest groups will have an opportunity to provide input into the development of the SDEIS and identify issues that should be addressed. Notices of public meetings or public hearings will be given through various forums providing the time and place of the meeting along with other relevant information. The SDEIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and SDEIS should be directed to FHWA at the address provided above.

Issued on: October 31, 2005.

Walter Boyd,

Field Operations Team Leader, Nashville, Tennessee.

[FR Doc. 05–22008 Filed 11–3–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Transit Administration Cooperative Procurement Pilot Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice; request for proposals.

SUMMARY: This notice solicits proposals for consideration for the Cooperative Procurement Pilot Program (CPPP). Section 166 of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 directs the Federal Transit Administration (FTA) to establish a pilot program to determine the benefits of encouraging cooperative procurement of major capital equipment. As specified in the Appropriations Act, three pilot projects were selected in November 2004. Section 167 of the Transportation Treasury, and Independent Agencies Appropriations Act, 2005 directs the FTA to continue the CPPP and to expand the program to five pilot projects. Under the CPPP, competitively selected grantees, consortiums of grantees, or members of the private sector acting as agents of grantees will develop cooperative specifications and conduct joint procurements. For this program, Congress has raised the Federal share to be provided from 80 percent to 90 percent.

DATES: Proposals (2 copies) and/or comments will be evaluated in the order they are received and the proposing party will receive notification of acceptance or denial no later than 90 days after FTA receives the proposal.

ADDRESSES: Proposals and/or comments should be submitted to Bruce Robinson, 400 Seventh Street, SW., Suite 9401, Washington, DC 20490 or *bruce.robinson@fta.dot.gov* and shall reference CPPP.

FOR FURTHER INFORMATION CONTACT: Bruce Robinson, Office of Research, Demonstration, and Innovation, Federal Transit Administration, (202) 366–4209, or e-mail: *bruce.robinson@fta.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Federal Transit Administration provides grants to State and local government agencies to support public transportation in communities across America. A major portion of these funds is used to purchase major capital equipment (e.g., buses, vans, railcars) used in providing public transit service. FTA's annual budget exceeds $7 billion, or which more than $3 billion is distributed by formula to more than 1,000 grantees nationwide. On average, FTA funds more than half of the bus purchases in any given year in the United States. The bus industry and FTA have promoted standard contract terms and conditions to try to reduce the number of individualized bus orders. Voluntary standard technical specifications and warranties have been developed and promoted by FTA and the American Public Transportation Association. To date, none of these efforts has reduced the use of individualized designs and specifications. This phenomenon also

occurs, perhaps less visibly, in the small vehicle groups (vans) and rail vehicles as well. The result is higher prices for vehicles. FTA believes that, in addition to cost savings, cooperative procurements could ease the burden on individual transit agencies and their specification writers, manufacturers, and suppliers, and promote healthy, competitive, and predictable transit related capital equipment markets. The program may also serve as an opportunity to improve the existing standard bus procurement guidelines.

This document lays out the proposed demonstration elements, as specified in FTA's 2004 Appropriations Act (Pub. L. 108–199), the benefits of the program, the application process, the evaluation criteria, and the technical assistance available. In addition this notice briefly describes the FTA report to Congress mandated for this demonstration.

The Cooperative Procurement section 166 of Public Law 108–199 directs FTA to conduct a Cooperative Procurement Pilot Program. The legislation contains specific language concerning the purpose of the pilot program, eligible expenses, maximum Federal share, outreach, and reporting. A summary of the section follows.

Section 167 of the Transportation Treasury, and Independent Agencies Appropriations Act, 2005 directs the FTA to continue the CPPP and to expand the program to five pilot projects. Section 166 calls for the Secretary of Transportation to conduct a pilot of three cooperative procurements of major capital equipment under sections 4307 (Urban Formula grants), 5309 (Discretionary Capital grants), and 5311 (Rural Formula grants) of FTA's authorizing legislation. It authorizes a 90 percent Federal share for grants to purchase major capital equipment under this program, compared to the 80 percent otherwise authorized in sections 5307, 5309 and 5311. Title 49 of the United States Code, chapter 53, authorizes FTA to provide grants to governmental agencies to promote the provision of transit services. The full text of section 166 is as follows:

Sec. 166. (a) In General—The Secretary shall establish a pilot program to determine the benefits of encouraging cooperative procurement of major capital equipment under sections 5307, 5309, and 5311. The program shall consist of three pilot projects. Cooperative procurements in these projects may be carried out by grantees, consortiums of grantees, or members of the private sector acting as agents of grantees.

(b) Federal Share—Notwithstanding any other provision of law, the Federal share for a grant under this pilot program shall be 90 percent of the net project cost.

(c) Permissible Activities—

(1) Developing Specifications—Cooperative specifications may be developed either by the grantees or their agents.

(2) Requests for Proposals—To the extent permissible under State and local law, cooperative procurements under this section may be carried out, either by the grantees or their agents, by issuing one request for proposal for each cooperative procurement, covering all agencies that are participating in the procurement.

(3) Best and Final Offers—The cost of evaluating best and final offers either by the grantees or their agents, is an eligible expense under this program.

(d) Technology—To the extent feasible, cooperative procurements under this section shall maximize use of Internet-based software technology designed specifically for transit buses and other major capital equipment to develop specifications; aggregate equipment requirements with other transit agencies; generate cooperative request for proposal packages; create cooperative specifications; and automate the request for approved equals process.

(e) Eligible Expenses—The cost of the permissible activities under (c) and procurement under (d) are eligible expenses under the pilot program.

(f) Proportionate Contributions—Cooperating agencies may contribute proportionately to the non-Federal share of any of the eligible expenses under (e).

(g) Outreach—The Secretary shall conduct outreach on cooperative procurement. Under this program the Secretary shall: (1) Offer technical assistance to transit agencies to facilitate the use of cooperative procurement of major capital equipment; and (2) conduct seminars and conferences for grantees, nationwide, on the concept of cooperative procurement of major capital equipment.

(h) Report—Not later than 30 days after delivery of the base order under each of the pilot projects, the Secretary shall submit to the House and Senate Committees on Appropriations a report on the results of that pilot project. Each report shall evaluate any savings realized through the cooperative procurement and the benefits of incorporating cooperative procurement, as shown by that project, into the mass transit program as a whole.

On November 16, 2004 FTA announced the selection of the first 3 CPPP pilot projects. Theses are:

1. A consortium organized and led by STV. This group will focus on purchasing low floor diesel buses in 30′, 35′ and 40′ configurations.

2. The Texas Department of Transportation. TxDOT will enter into a requirements contract applicable to its subgrantees and other local government entities thoughtout the state. They will focus on purchasing diesel cutaway buses appropriate for rural and paratransit applications.

3. A consortium led by the Regional Transportation Commission of Southern Nevada. This group expects to focus on purchasing CNG buses in several configurations.

Goals

FTA's goals for the CPPP are to develop, refine, and prove innovative procurement practices that provide significant benefits to the public transit industry, including cost savings compared to a standard procurement (both in initial procurement costs and operational costs over the life of the equipment); improved efficiency of the procurement processes; procurement methods that are easily implemented; decreased managerial burden on the organization involved; and efficient use of Interned-based software technology in developing specifications, aggregating equipment requirements with other transit agencies, and generating cooperative requests for proposal packages.

Initial Issues

By introducing a number of innovative procurement practices, this program could identify and provide significant advantages to the transit industry. We also recognize that the failure to consider the full effects of any particular project could prove disruptive to the transit industry. The major issues related to competition are captured in this section and proposers are asked to address these concerns in their proposals.

- It is important that this program not artificially skew the bus, supplier, or other major capital equipment markets. Sound manufacturing and supply markets are vital to maintaining the availability of high quality, reasonably priced buses and other major capital equipment. In this program, FTA hopes to secure the best available pricing and quality for grantees' major capital equipment purchases and achieve the best value for taxpayer dollars.
- The pilot projects ought to be narrowly tailored (e.g., one project may involve procurement of 40′, 102″-wide, low-floor, clean diesel buses) toor enhance the program's viability and our

ability to obtain realistic comparisons of the procurement methods employed.

• Because procurements of buses and other rolling stock often extend to five years of requirements, many interested transit agencies may be obligated under the terms of existing multi-year contracts. A transit agency obligated under a current contract may wish to be involved in a pilot project's out-years. For example, a transit agency obligated to buy buses under a current contract for two more years may wish to join the project for purchases effective in year three (assuming a five-year contract duration under a project). If a transit agency holds an existing option or other right to purchase buses in the future, participation in the CPPP might provide better pricing that would warrant a decision not to exercise the option. A proposal including participants facing this situation should explain how it will address this issue, e.g., forego or assign the option to other nonparticipants.

• Similarly, current practice allows transit agencies to assign rights to purchase buses to other transit agencies not parties to the original contract, a practice known in the industry as ''piggybacking.'' This practice may be inconsistent with the concept of joint procurement, a potential threat to the market, or otherwise inappropriate in this program. Proposals should address this issue in terms of the intent to allow or not allow assignments.

• One joint procurement model involves designating a lead transit agency to act as the ''contracting officer'' for all project participants, with other participants limited to the role of ''authorized purchaser'' without authority to change, curtail, or extend the single contract. Another model could have all participants in a project cooperate in issuing specifications but independently contract with the supplier(s) selected according to each transit agency's independent analysis of the suppliers' proposals. CPPP proposals should explain how this, or other methods they propose to use, would serve the program's goals and the intent of the individual project.

• Bonding and payment terms, as well as overall risk management and mitigation, are concerns for both transit agencies and suppliers. This program offers an opportunity to foster innovative approaches to these issues that fairly and economically allocate risks.

• The voluntary industry bus specification (the Standard Bus Procurement Guidelines) funded by FTA and issued by the American Public Transportation Association may serve as a baseline for one or more project specifications.

Submission of Proposals

FTA solicits proposals for two pilot CPPP projects. Proposals should present an overview of the proposed project, a preliminary list of the participants, the objectives of the procurement, technological aspects of the proposed project, anticipated costs (not including the purchase price of the equipment to be procured), and a description of how the project meets the selection criteria below and approaches the issues described above. Not all project participants need be identified at the time of the proposal; they may be added to the project once the selection is made.

Selection Criteria

In selecting the pilot CPPP projects, FTA will give preference to proposals aimed primarily at procurements of rolling stock, but will consider cooperative procurement proposals of other major capital equipment as well. FTA's selection will be based on a determination of how to best test different methods of joint procurement, so that FTA can compare and contrast those methods and report the results to Congress and the industry as a guide for future procurement actions. FTA will select the two pilot projects after consideration of:

• Sound business planning. Proposals should demonstrate a clear, concise procurement plan, ordering procedures, financial and contractual aspects of their approach, and contract administration techniques.

• Identification, mitigation, management, and sharing of risk. This includes approaches to bonding, payment terms, warranties, and other elements of risk that affect pricing.

• Amount and likelihood of economic benefits. Proposals should present, to the extent possible, projected costs savings to be garnered through administrative efficiencies, as well as potential savings predicated on volume buying.

• Administrative efficiency. This includes streamlining efforts that assist buyers and sellers alike.

• Innovative techniques. This includes the use of technology to promote efficiency and/or reduce costs for buyers and sellers, novel approaches to financing, maintenance, parts supplies, or other aspects of total costs of ownership.

• Approach to the initial issues. Proposals should explain how they will approach FTA's systemic concerns explained above.

• Technical capacity. This refers to the capacity of the proposers to undertake and manage a joint procurement of this nature.

Evaluation Process

FTA staff will evaluate all proposals based on the selection criteria listed above. We may engage in discussions with individual proposers to further define the pilot projects, but reserve the right to select one or more pilot projects based on the original submissions and without discussions.

Program Evaluation and Reporting

Following the award of the procurement contract(s) in each pilot project, FTA will evaluate the procurement process used and the results achieved in each project, and report the findings to Congress. FTA's evaluation will be based on the cost savings compared to a standard procurement; the improvement in the efficiency of the procurement process; the ease of implementing the procurement methods; the decrease in managerial burden on the organizations involved; and the use of Internet-based software technology in developing specifications, aggregating equipment requirements with other transit agencies, and generating cooperative requests for proposal packages. FTA will use the results of this evaluation to formulate guidance for grantees on the use of cooperative procurement methods. Participating entities will be required to cooperate in the information gathering, reporting, and outreach processes.

Issued on: November 1, 2005.

Jennifer L. Dorn,

Administrator.

[FR Doc. 05–22058 Filed 11–3–05; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1081X] [1]

San Pedro Railroad Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ

On October 17, 2005, San Pedro Railroad Operating Company, LLC

[1] This filing is a resubmission of a petition for exemption previously filed on June 6, 2005, wherein SPROC sought authorization to abandon the above lines. *See San Pedro Railroad Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ*, STB Docket No. AB–441 (Sub-No. 4X). Notice of the filing was served and published in the **Federal Register** on June 24, 2005

Continued

(SPROC), a wholly owned subsidiary of Arizona Rail Group, filed with the Surface Transportation Board a petition [2] under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon approximately 76.2 miles of railroad in Cochise County, AZ, as follows: (1) The Bisbee Branch, between milepost 1085.0 at Bisbee Junction and milepost 1090.6 at Bisbee, a distance of 5.6 miles; and (2) the Douglas Branch (a) between milepost 1097.3 near Paul Spur and milepost 1106.5 near Douglas, a distance of 9.2 miles, (b) between milepost 1055.8 near Charleston and milepost 1097.3 near Paul Spur, a distance of 41.5 miles, and (c) between milepost 1040.15 near Curtiss and milepost 1055.8 near Charleston, a distance of 19.9 miles. The lines traverse U.S. Postal Service Zip Codes 85602, 85603, 85607, and 85615 and include no stations.

The lines do not contain federally granted rights-of-way. Any documentation in SPROC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 3, 2006.[3]

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 25, 2005. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–1081X, and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036. Replies to SPROC's petition are due on or before November 25, 2005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 28, 2005.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–22053 Filed 11–3–05; 8:45 am]

BILLING CODE 4915–01–P

(70 FR 36696–97). By decision served on September 15, 2005, the Board denied the petition without prejudice to SPROC's filing an application or a properly supported petition for exemption under a new docket number.

[2] SPROC concurrently filed a motion for a protective order. The motion was granted by decision served on October 26, 2005.

[3] SPROC has requested that this proceeding be handled expeditiously.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8895

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 8895, One-Time Dividends Received Deduction for Certain Cash Dividends from Controlled Foreign Corporations.

DATES: Written comments should be received on or before January 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* One-Time Dividends Received Deduction for Certain Cash Dividends from Controlled Foreign Corporations.

OMB Number: 1545–1948.

Form Number: 8895.

Abstract: Form 8895 is used by a U.S. corporation to elect the 85% dividends received deduction provided under section 965 and to compute the DRD.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 25 hours, 1 minute.

Estimated Total Annual Burden Hours: 50,020.

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 20, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–6107 Filed 11–3–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–64

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 Notice 2005–64, Foreign Tax Credit and Other Guidance under Section 965.

DATES: Written comments should be received on or before January 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit and Other Guidance under Section 965.

OMB Number: 1545–1957.

Form Number: Notice 2005–64.

Abstract: This document provides guidance under new section 965 enacted by the American Jobs Creation Act of 2004 (Pub. L. 108–357). In general, and subject to limitations and conditions, section 965(a) provides that a corporation that is a U.S. shareholder of a controlled foreign corporation (CFC) may elect, for one taxable year, an 85 percent dividends received deduction (DRD) with respect to certain cash dividends it receives from its CFCs. Section 965(f) provides that taxpayers may elect the application of section 965 for either the taxpayer's last taxable year which begins before October 22, 2004, or the taxpayer's first taxable year which begins during the one-year period beginning on October 22, 2004.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 250,000.

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 20, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–6108 Filed 11–3–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Rev. Proc 2005–51

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 Rev. Proc 2005–51, Revenue Procedures regarding I.R.C. 6707A(e) and Disclosure with the SEC.

DATES: Written comments should be received on or before January 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Revenue Procedures regarding I.R.C. 6707A(e) and Disclosure with the SEC.

OMB Number: 1545–1956.

Form Number: Rev. Proc. 2005–51.

Abstract: This revenue procedure provides guidance to persons who are required to disclose payment of certain penalties arising from participation in reportable transactions on forms filed with the Securities and Exchange Commission.

Current Actions: There is no change in the paperwork burden previously

approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 859.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 429.50.

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 20, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–6109 Filed 11–3–05; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 70, No. 213

Friday, November 4, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21257; Airspace Docket No. 05–AGL–05]

Modification of Class E Airspace; Akron, OH

Correction

In rule document 05–21586 beginning on page 62235 in the issue of Monday, October 31, 2005, make the following correction:

§71.1 [Corrected]

On page 62235, in the third column, in §71.1, under the heading **AGL OH E5 Akron, OH [Revised]**, in the last line, ''Lat. 40° 50′ 58″ N.'' should read ''Lat. 40° 54′ 58″ N.''.

[FR Doc. C5–21586 Filed 11–3–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
November 4, 2005

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Income Attributable to Domestic Production Activities; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105847–05]

RIN 1545–BE33

Income Attributable to Domestic Production Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the deduction for income attributable to domestic production activities under section 199. Section 199 was enacted as part of the American Jobs Creation Act of 2004, (the Act). The regulations will affect taxpayers engaged in certain domestic production activities. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by January 3, 2006. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, January 11, 2006, must be received by December 21, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–105847–05), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–105847–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–105847–05). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.199–1, 1.199–3, 1.199–6, and 1.199–8, Paul Handleman or Lauren Ross Taylor, (202) 622–3040; concerning § 1.199–2, Alfred Kelley, (202) 622–6040; concerning § 1.199–4(c) and (d), Richard Chewning, (202) 622–3850; concerning all other provisions of § 1.199–4, Scott Rabinowitz, (202) 622–4970; concerning § 1.199–5, Martin Schaffer, (202) 622–3080; concerning § 1.199–7, Ken Cohen, (202) 622–7790; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 3, 2006.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in § 1.199–6(b) involving patrons of agricultural and horticultural cooperatives. This information is required so that patrons of agricultural and horticultural cooperatives may claim the section 199 deduction. The collections of information is mandatory. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 9,000 hours.

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 3,000.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains proposed regulations relating to the deduction for income attributable to domestic production activities under section 199 of the Internal Revenue Code (Code). Section 199 was added to the Code by section 102 of the Act (Public Law 108–357, 118 Stat. 1418). On January 19, 2005, the IRS and Treasury Department issued Notice 2005–14 (2005–7 I.R.B. 498) providing interim guidance on section 199 and inviting comments on issues arising under section 199. Written and electronic comments responding to Notice 2005–14 were received. The IRS and Treasury Department have reviewed and considered all the comments in the process of preparing these proposed regulations. This preamble to the proposed regulations describes many of the more significant comments received by the IRS and Treasury Department. Because of the large volume of comments received, however, the IRS and Treasury Department are not able to address all of the comments in this preamble.

General Overview

Section 199(a)(1) allows a deduction equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of: (a) The qualified production activities income (QPAI) of the taxpayer for the taxable year; or (b) taxable income (determined without regard to section 199) for the taxable year (or, in the case of an individual, adjusted gross income (AGI)).

Section 199(b)(1) limits the deduction for a taxable year to 50 percent of the W–2 wages paid by the taxpayer during the calendar year that ends in such taxable year. For this purpose, section 199(b)(2) defines the term *W–2 wages* to mean the sum of the aggregate amounts the taxpayer is required under section 6051(a)(3) and (8) to include on the Forms W–2, ''Wage and Tax Statement,'' of the taxpayer's employees during the calendar year ending during the

taxpayer's taxable year. Section 199(b)(3) provides that the Secretary shall prescribe rules for the application of section 199(b) in the case of an acquisition or disposition of a major portion of either a trade or business or a separate unit of a trade or business during the taxable year.

Qualified Production Activities Income

Under section 199(c)(1), QPAI is the excess of domestic production gross receipts (DPGR) over the sum of: (a) The cost of goods sold (CGS) allocable to such receipts; (b) other deductions, expenses, or losses directly allocable to such receipts; and (c) a ratable portion of deductions, expenses, and losses not directly allocable to such receipts or another class of income.

Section 199(c)(2) provides that the Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining QPAI.

Section 199(c)(3) provides special rules for determining costs in computing QPAI. Under these special rules, any item or service imported into the United States without an arm's length transfer price shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it enters the United States. A similar rule applies in determining the adjusted basis of leased or rented property when the lease or rental gives rise to DPGR. If the property has been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis must not exceed the difference between the value of the property when exported and its value when imported back into the United States after further manufacture.

Section 199(c)(4)(A) defines *DPGR* to mean the taxpayer's gross receipts that are derived from: (i) Any lease, rental, license, sale, exchange, or other disposition of (I) qualifying production property (QPP) that was manufactured, produced, grown, or extracted (MPGE) by the taxpayer in whole or in significant part within the United States; (II) any qualified film produced by the taxpayer; or (III) electricity, natural gas, or potable water (collectively, utilities) produced by the taxpayer in the United States; (ii) construction performed in the United States; or (iii) engineering or architectural services performed in the United States for construction projects in the United States.

Section 199(c)(4)(B) excepts from DPGR gross receipts of the taxpayer that are derived from: (i) The sale of food and beverages prepared by the taxpayer at a retail establishment; and (ii) the transmission or distribution of electricity, natural gas, or potable water.

Section 199(c)(5) defines *QPP* to mean: (A) Tangible personal property; (B) any computer software; and (C) any property described in section 168(f)(4) (certain sound recordings).

Section 199(c)(6) defines a *qualified film* to mean any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to production of the property is compensation for services performed in the United States by actors, production personnel, directors, and producers. The term does not include property with respect to which records are required to be maintained under 18 U.S.C. 2257 (generally, films, videotapes, or other matter that depict actual sexually explicit conduct and are produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or are shipped or transported or are intended for shipment or transportation in interstate or foreign commerce).

Section 199(c)(7) provides that DPGR does not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person. A person is treated as related to another person if both persons are treated as a single employer under either section 52(a) or (b) (without regard to section 1563(b)), or section 414(m) or (o).

Pass-Thru Entities

Section 199(d)(1) provides that, in the case of an S corporation, partnership, estate or trust, or other pass-thru entity, section 199 generally is applied at the shareholder, partner, or similar level, except as otherwise provided in rules applicable to patrons of cooperatives. Section 199(d)(1) further provides that the Secretary shall prescribe rules for the application of section 199, including rules relating to: (a) Restrictions on the allocation of the deduction to taxpayers at the partner or similar level; and (b) additional reporting requirements.

The general rule is that section 199 is applied at the shareholder, partner, or similar level. However, section 199(d)(1)(B) limits the amount of W–2 wages from a pass-thru entity that may be used by each shareholder, partner, or similar person to compute the section 199 deduction. Specifically, section 199(d)(1)(B) provides that such person is treated as having been allocated W–2 wages from such entity in an amount equal to the lesser of: (i) Such person's allocable share of such wages (without regard to this rule) from such entity as determined under regulations prescribed by the Secretary; or (ii) 2 times 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the QPAI of that entity allocated to such person for the taxable year.

Individuals

In the case of an individual, section 199(d)(2) provides that the deduction is equal to the applicable percentage of the lesser of the taxpayer's: (a) QPAI for the taxable year; or (b) AGI for the taxable year determined after applying sections 86, 135, 137, 219, 221, 222, and 469, and without regard to section 199.

Patrons of Certain Cooperatives

Section 199(d)(3) provides special rules under which a taxpayer receiving certain patronage dividends or certain qualified per-unit retain allocations from a cooperative (to which subchapter T applies) engaged in the MPGE, in whole or in significant part, or in the marketing of any agricultural or horticultural product is allowed a section 199 deduction with respect to the amount of the patronage dividends or qualified per-unit retain allocations that are: (a) Allocable to the portion of the cooperative's QPAI that would be deductible by the cooperative; and (b) designated as such by the cooperative in a written notice mailed to its patrons during the payment period described in section 1382. Such an amount, however, does not reduce the taxable income of the cooperative under section 1382.

In determining the portion of the cooperative's QPAI that would be deductible by the cooperative, the cooperative's taxable income is computed without taking into account any deduction allowable under section 1382(b) or (c) (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions) and, in the case of a cooperative engaged in marketing agricultural and horticultural products, the cooperative is treated as having MPGE, in whole or in significant part, any agricultural and horticultural products marketed by the cooperative that its patrons have MPGE.

Expanded Affiliated Groups

Section 199(d)(4)(A) provides that all members of an expanded affiliated group (EAG) are treated as a single corporation for purposes of section 199. Taking into account the provisions of the Congressional Letter, as described elsewhere, section 199(d)(4)(B) provides that an EAG is an affiliated group as defined in section 1504(a), determined by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it

appears and without regard to section 1504(b)(2) and (4).

Section 199(d)(4)(C) provides that, except as provided in regulations, the section 199 deduction is allocated among the members of the EAG in proportion to each member's respective amount (if any) of QPAI.

Trade or Business Requirement

Section 199(d)(5) provides that section 199 is applied by taking into account only items that are attributable to the actual conduct of a trade or business.

Alternative Minimum Tax

Section 199(d)(6) provides rules to coordinate the deduction allowed under section 199 with the alternative minimum tax (AMT) imposed by section 55. Taking into account the provisions of the Congressional Letter, as described elsewhere, section 199(d)(6) provides that for purposes of determining alternative minimum taxable income (AMTI) under section 55, the section 199 deduction shall be determined without regard to any adjustments under sections 56 through 59, except that in the case of a corporation (including a corporation subject to tax under section 511), the taxable income limitation is the corporation's AMTI.

Authority To Prescribe Regulations

Section 199(d)(7) authorizes the Secretary to prescribe such regulations as are necessary to carry out the purposes of section 199.

Congressional Letter

On July 21, 2005, the Chairman and Ranking Member of the Senate Finance Committee and the Chairman of the House Ways and Means Committee introduced the Tax Technical Corrections Act of 2005, H.R. 3376 and S. 1447, 109th Cong. (2005). In a letter on the same date to the Treasury Department (the Congressional Letter), they provided clarification for several issues so that appropriate regulatory guidance may be issued reflecting their intention. These proposed regulations reflect the intent expressed in the Congressional Letter with respect to section 199.

Summary of Comments

Qualified Production Activities Income

One commentator requested that the proposed regulations clarify the treatment of advance payments, and the costs related to those payments, for purposes of computing QPAI. Section 4.03(3) of Notice 2005–14 provides that, in the case of advance payments (for goods, services, and use of property) that are recognized under the taxpayer's method of accounting in a taxable year earlier than that in which the property or services are delivered, performed, and provided, the taxpayer must accurately identify, based on a reasonable method, whether the receipts (and the corresponding expenses) qualify as DPGR. If a taxpayer recognizes an advance payment in Year 1, and the CGS in Year 2, the commentator asks whether CGS must be applied to reduce DPGR in Year 2, even though the DPGR and CGS are recognized in different taxable years.

The proposed regulations clarify that, in the example the commentator cites involving advance payments, as well as other circumstances (such as taxpayers that use the cash receipts and disbursements method) where gross receipts and corresponding expenses are recognized in different taxable years, taxpayers must take the receipts and expenses into account for purposes of section 199 in the taxable year such items are recognized under their methods of accounting for Federal income tax purposes. The IRS and Treasury Department believe it would be unduly burdensome and complicated to create a separate set of timing rules for purposes of section 199. Thus, gross receipts and costs are taken into account for purposes of computing QPAI in the taxable year they are recognized for Federal income tax purposes under the taxpayer's methods of accounting, even if the related gross receipts or costs, as applicable, are taken into account in different taxable years. If the gross receipts are recognized in an intercompany transaction within the meaning of § 1.1502–13, see also § 1.199–7(d).

A commentator requested clarification of how the advance payment rules would apply in the following scenario. In Year 1, a taxpayer sells for $100 a one-year software maintenance agreement that provides for software updates (that the taxpayer would MPGE in whole or in significant part within the United States) and customer support services. At the end of Year 1, the taxpayer uses a reasonable method to allocate 60 percent of the gross receipts ($60) to the software updates and 40 percent ($40) to the customer support services. The taxpayer treats the $60 as DPGR in Year 1. In Year 2, no software updates are provided. The commentator asks whether the taxpayer in this scenario would be required to amend its Year 1 return and reduce its DPGR by $60, reduce DPGR by $60 in Year 2, or make no adjustment for Year 1 or Year 2.

Consistent with the application of the rules relating to advance payments, which require that the taxpayer follow its methods of accounting for Federal income tax purposes, the taxpayer should make no adjustment in Year 1 (by amended return) or in Year 2 for the $60 that was appropriately treated as DPGR in Year 1, even though no software updates were provided in Year 2.

A commentator suggested that the proposed regulations clarify how a taxpayer that uses a long-term contract method determines the portion of the percentage of completion revenue reported for each contract for the taxable year that is allocated to DPGR. The proposed regulations provide that taxpayers using a long-term contract method (for example, under section 460) may use any reasonable method of allocating gross receipts under such a contract between DPGR and non-DPGR.

A number of comments were received regarding the rule in section 4.03(1) of Notice 2005–14 that requires that section 199 be applied on an item-by-item basis. Some commentators stated that applying section 199 on an item-by-item basis is unduly burdensome, and that the proposed regulations should permit taxpayers to determine QPAI on a division or product-line basis instead. The IRS and Treasury Department, however, continue to believe that applying section 199 on a basis other than item-by-item would allow taxpayers to receive the benefits of section 199 with respect to gross receipts that should not qualify as DPGR. Accordingly, the proposed regulations retain the requirement that section 199 be applied on an item-by-item basis.

Many commentators requested clarification of what constitutes an item. Commentators asked whether an item is a final product or whether one or more component parts of the final product may qualify as an item. For example, if a final product does not meet the in whole or in significant part requirement (so that gross receipts from the sale of the final product are non-DPGR), commentators inquired whether they could allocate gross receipts to a component of the product that did meet all of the requirements of section 199(c), and thereby treat that portion of the gross receipts as DPGR.

H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. 272 n. 27 (2004) (the Conference Report) indicates that a component may be treated as qualifying property in the case of food and beverages. Footnote 27 of the Conference Report explains that, in the context of food and beverages prepared

at a retail establishment, although a cup of coffee prepared at a retail establishment does not qualify under section 199(c), a portion of the cup of coffee, that is, the coffee beans (roasted at a facility separate from the retail establishment) that meet the requirements under section 199(c), does qualify under section 199. The Joint Committee on Taxation Staff, *General Explanation of Tax Legislation Enacted in the 108th Congress,* 109th Cong., 1st Sess. 172 (2005) (the Blue Book), indicates Congressional intent that this treatment is not limited to food and beverages, but rather, is permitted with respect to section 199 in general. Accordingly, in the case of QPP, qualified films, and utilities, the proposed regulations define an *item* as the property offered for sale to customers that meets all of the requirements under section 199(c). If the property offered for sale does not meet all of the requirements under section 199(c), a taxpayer must treat as the item any portion of the property offered for sale that meets all of these requirements. However, in no case shall the portion of the property offered for sale that is treated as the item exclude any other portion that meets all of the requirements under section 199(c). For example, assume that the taxpayer MPGE software entirely within the United States, attaches the software to a router that it MPGE entirely outside the United States, and then sells the combined property. Assume further that if the combined property is treated as the item, the gross receipts from the sale will not qualify as DPGR because the combined property does not satisfy the in whole or in significant part requirement. The proposed regulations require the taxpayer to treat the software as an item; separate from the router, because the software meets all of the requirements of section 199(c) (that is, it is computer software that is MPGE by the taxpayer in whole or in significant part within the United States). This is the case even if the software is not offered for sale to customers separately from the router. Accordingly, the gross receipts from the software qualify as DPGR, but the gross receipts from the router do not qualify as DPGR.

Alternatively, assume that the taxpayer MPGE only software but that some of the content is MPGE within the United States and some content is MPGE outside the United States. Assuming that the software does not meet the requirements of section 199(c), that portion of the software that is MPGE within the United States must be treated as the item. Accordingly, gross receipts from the sale of the software must be allocated (using any reasonable method) between that portion that is MPGE within the United States (which is DPGR if all other requirements of section 199(c) are met) and that portion that is MPGE outside the United States (which is non-DPGR).

In the case of construction and architectural and engineering services, commentators asked that the proposed regulations clarify whether the item is the construction project itself, or whether the item can constitute a task or sub-task that is performed as part of the construction project. The IRS and Treasury Department believe that the determination of what constitutes the item for purposes of construction and architectural or engineering services should be made on a case-by-case basis taking into account all of the facts and circumstances. Taxpayers may use any reasonable method of determining the item for this purpose.

A commentator requested that the proposed regulations clarify how the rules for determining DPGR apply in the case of a taxpayer that repairs or rebuilds property for a customer. The commentator suggested the IRS and Treasury Department distinguish between ''repair'' activities and ''rebuild'' activities. In the case of a repair contract where the customer retains the benefits and burdens of the property while it is being repaired, the commentator suggests that the contractor should be permitted to treat as DPGR the gross receipts attributable to parts that the contractor MPGE in whole or in significant part within the United States, as well as the gross receipts attributable to the installation of those parts. Gross receipts attributable to the parts MPGE by the taxpayer in whole or in significant part within the United States are DPGR (assuming all the other requirements of section 199(c) are met). Consistent with the general rule for installation (discussed below), the installation activity will be considered an MPGE activity only if the contractor retains the benefits and burdens of ownership with respect to the parts while the parts are being installed. In addition, the gross receipts attributable to the installation of parts that the contractor MPGE may qualify as DPGR if the exception for embedded installation described in § 1.199–3(h)(4)(ii)(D) of the proposed regulations applies. The contractor is not permitted to treat as DPGR gross receipts attributable to purchased parts, or the installation of purchased parts.

The commentator suggested that the proposed regulations provide a special rule for ''rebuild'' contracts, which the commentator suggested be defined as any contract where the value of the rebuild work performed exceeds 25 percent of the value of the preexisting property immediately before the rebuild. The commentator further suggested that if more than 50 percent of the contractor's costs of performing the rebuild is attributable to the cost of parts that the contractor MPGE, the contractor should not be required to allocate its gross receipts between parts that it MPGE and any parts that it purchased. The commentator's suggested rule would effectively create for rebuild contracts a separate *de minimis* exception to the general allocation requirement. The IRS and Treasury Department believe that the *de minimis* exceptions provided in the proposed regulations (for example, the 5 percent *de minimis* exception discussed later generally applicable to embedded services and embedded nonqualifying property) are appropriate. Accordingly, the proposed regulations do not adopt this suggestion.

Section 4.03(2) of Notice 2005–14 provides that, if the amount of the taxpayer's gross receipts that do not qualify as DPGR equals or exceeds 5 percent of the total gross receipts, the taxpayer is required to allocate all gross receipts between DPGR and non-DPGR. For purposes of this 5 percent *de minimis* rule, the proposed regulations in § 1.199–1(d)(2) provide that, in the case of an S corporation, partnership, estate, trust, or other pass-thru entity, the determination of whether less than 5 percent of the pass-thru entity's total gross receipts are non-DPGR is made at the pass-thru entity level. In the case of an owner of a pass-thru entity, the determination of whether less than 5 percent of the owner's total gross receipts are non-DPGR is made at the owner level, taking into account the owner's share of any of the pass-thru entity's gross receipts as well as all other gross receipts of the owner. In addition, the 5 percent *de minimis* exception in § 1.199–3(h)(4)(ii)(E) applies at the entity level to each item that qualifies.

Commentators also observed that, in determining whether the taxpayer's method of allocating gross receipts and CGS between DPGR and non-DPGR is reasonable, the list of factors cited in section 4.03(2) of Notice 2005–14 with respect to gross receipts is inconsistent with the list of factors cited in section 4.05(2)(b) of the notice with respect to CGS. The list of factors was intended to be as consistent as possible for both gross receipts and CGS, and appropriate changes to the lists have been

incorporated into the proposed regulations as necessary.

Taxable Income

In the Congressional Letter, the Treasury Department was advised that unrelated business taxable income, rather than taxable income, applies for purposes of section 199(a)(1) in computing the unrelated business income tax under section 511. Accordingly, the proposed regulations in § 1.199–1(b) provide that, for purposes of determining the tax imposed by section 511, section 199(a)(1)(B) is applied using unrelated business taxable income.

The Congressional Letter also indicates that the section 199 deduction is not taken into account for purposes of computing taxable income under the rules relating to the carryover of a net operating loss (NOL). Accordingly, the proposed regulations provide that for purposes of computing the section 199 deduction, the definition of taxable income under section 63 applies, but without regard to section 199. The proposed regulations also provide that the section 199 deduction is not taken into account in computing taxable income when determining the amount of the NOL carryback and carryover under section 172(b)(2). Thus, except as otherwise provided in § 1.199–7(c)(2) of the proposed regulations (concerning the portion of a section 199 deduction allocated to a member of an EAG), the section 199 deduction can neither create an NOL carryback or carryover nor increase the amount of an NOL carryback or carryover.

Wage Limitation

A commentator requested that the IRS and Treasury Department clarify whether self-employment income of self-employed individuals as reported on the individuals' Schedule SE, ''Self-Employment Income,'' of Form 1040 and/or payments for nonemployee compensation reported by the taxpayer on Form 1099–MISC, ''Miscellaneous Income,'' are included in determining the amount of the W–2 wages of the taxpayer. A commentator also requested that the IRS clarify whether guaranteed payments to partners are included in W–2 wages for purposes of section 199.

The statutory language in section 199(b) refers to the amounts a taxpayer is required to report as wages on Form W–2 pursuant to section 6051 with respect to the employment of employees of the taxpayer. Neither self-employment income nor guaranteed payments to partners are required to be reported under section 6051. In addition, section 4.02(1)(a) of Notice 2005–14 and § 1.199–2(a)(1) of the proposed regulations define employees as including only common law employees of the taxpayer and officers of a corporate taxpayer. Consistent with the statutory intent, this definition does not include independent contractors or partners. Thus, payments to independent contractors and self-employment income, including guaranteed payments made to partners, are not included in determining W–2 wages.

The proposed regulations provide for the same three methods of calculating W–2 wages as contained in Notice 2005–14. It is anticipated that when final regulations are issued, these three methods will be published in a notice rather than as part of the final regulations. It is anticipated that this notice will be published at the same time as the final regulations. The methods will be included in a notice rather than the final regulations so that if changes are made to the box numbers on Form W–2, ''Wage and Tax Statement,'' a new notice can be issued reflecting those changes more promptly than an amendment to final regulations.

The non-duplication rule in § 1.199–2(e) continues to provide that amounts that are treated as W–2 wages for any taxable year under any method may not be treated as W–2 wages for any other taxable year. Additional language has been added to the non-duplication rule to clarify that the same W–2 wages cannot be claimed by more than one taxpayer for purposes of section 199.

Domestic Production Gross Receipts

DPGR includes the gross receipts of the taxpayer that are derived from any lease, rental, license, sale, exchange, or other disposition of property described in section 199(c)(4)(A)(i). Commentators specifically asked whether fees such as cotton or real estate broker's fees are DPGR. These fees are non-DPGR because they are not derived from any lease, rental, license, sale, exchange, or other disposition of property under section 199(c)(4)(A)(i).

Commentators asked for clarification of whether DPGR includes gross receipts derived by a taxpayer from the subsequent sale or lease of QPP MPGE within the United States by the taxpayer, sold, and then reacquired by the taxpayer. The proposed regulations in § 1.199–3(h)(2) provide an example to illustrate the rule that gross receipts from the subsequent sale or lease of QPP are DPGR to the taxpayer that originally MPGE the QPP within the United States. Any interest component of the lease payment also qualifies as DPGR because section 199(c)(4)(A)(i) provides that DPGR means gross receipts derived by the taxpayer from any lease.

Commentators pointed out that the rule for allocating gross receipts for purposes of identifying DPGR under section 3.04(1) of Notice 2005–14 appears to adopt a specific identification standard, whereas section 4.03(2) appears to provide a reasonable basis standard. The proposed regulations provide in § 1.199–1(d)(1) that the taxpayer must allocate its gross receipts from all transactions based on a reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances and that accurately identifies the gross receipts that constitute DPGR. If a taxpayer can, without undue burden or expense, specifically identify where an item was manufactured, or if the taxpayer uses a specific identification method for other purposes, then the taxpayer must use that specific identification method to determine DPGR. If a taxpayer does not use a specific identification method for other purposes and cannot, without undue burden or expense, use a specific identification method, the taxpayer is not required to use a specific identification method to determine DPGR.

Related Persons

Section 199(c)(7) provides that DPGR does not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person. A person is treated as related to another person if both persons are treated as a single employer under either section 52(a) or (b) (without regard to section 1563(b)), or section 414(m) or (o). However, footnote 29 in the Conference Report indicates that this provision is not intended to apply to property leased by the taxpayer to a related person if the property is held for sublease or is subleased to an unrelated person for the ultimate use of such unrelated person, or to a license to a related person for reproduction and sale, exchange, lease, rental or sublicense to an unrelated person for the ultimate use of such unrelated person. Accordingly, the proposed regulations include these exceptions from the general rule of exclusion under section 199(c)(7).

One commentator stated that if a television network licenses programming to an affiliate station, applying section 199(c)(7) to treat the royalty payment received from the affiliate as non-DPGR places these vertically integrated companies at a competitive disadvantage. The commentator therefore suggested that the proposed regulations provide an

exception for networks and affiliate stations. The proposed regulations do not adopt this suggestion, which is not consistent with section 199(c)(7).

Derived From a Lease, Rental, License, Sale, Exchange, or Other Disposition

Commentators asked whether gains and losses associated with hedging transactions are included in DPGR. For example, utilities may hedge to manage the risk of changes in prices of ordinary inputs into the production process. For purposes of section 199 only, the proposed regulations include a rule in § 1.199–3(h)(3) concerning hedges (within the meaning of section 1221(b)(2) and § 1.1221–2(b)) of inventory that is QPP and supplies consumed in activities giving rise to DPGR. The proposed regulations require gain or loss on the hedging transaction to be taken into account in determining DPGR. The proposed rule applies to hedges that manage the risk of currency fluctuations but only to the extent that the hedges are not integrated with an underlying transaction under § 1.988–5(b).

Commentators suggested that the proposed regulations treat gross receipts attributable to the distribution or delivery of QPP as derived from the lease, rental, license, sale, exchange, or other disposition of that property. The commentators stated that section 199(c)(4)(B)(ii), which specifically provides that DPGR does not include gross receipts derived from the transmission and distribution of utilities, indicates (by negative implication) that gross receipts attributable to the distribution or delivery of QPP is intended to be considered DPGR. Moreover, some commentators interpreted language in section 3.04(10)(c) of Notice 2005–14, stating that bottled water is treated as QPP and that DPGR may include gross receipts attributable to distribution of bottled water, as suggesting that gross receipts attributable to distribution and delivery of QPP are considered DPGR.

In general, the IRS and Treasury Department believe that gross receipts attributable to distribution and delivery of QPP are not DPGR because distribution and delivery are properly regarded as services, regardless of whether the taxpayer retains the benefits and burdens of ownership of the property at the time it is delivered. No inference to the contrary in Notice 2005–14 was intended. Thus, the proposed regulations clarify that taxpayers generally must allocate gross receipts between the lease, rental, license, sale, exchange, or other disposition of the property itself and the delivery component. The IRS and Treasury Department, however, believe that, because distribution and delivery are service components common to QPP, it is appropriate, as a matter of administrative convenience, to treat embedded distribution and delivery services similar to the qualified warranty exception in section 4.04(7)(b) of Notice 2005–14. Thus, the taxpayer must include in DPGR gross receipts attributable to the distribution and delivery of QPP if (1) in the normal course of business, the charge for the delivery or distribution service is included in the price charged for the sale of the QPP, and (2) the charge for the delivery or distribution service is neither separately offered nor separately bargained for with the customer.

For similar reasons, the proposed regulations also treat embedded qualified operating manuals provided in connection with the sale or disposition of QPP, qualified films, and utilities similar to embedded qualified warranties.

The proposed regulations also provide special rules for installation activities. The IRS and Treasury Department believe that, in some circumstances, installation is appropriately viewed as an MPGE activity, and in others it is appropriately viewed as a service. For example, installation is properly viewed as an MPGE activity if the taxpayer MPGE QPP within the United States and installs the QPP while the taxpayer retains the benefits and burdens of ownership of the QPP. In that case, gross receipts attributable to the installation, whether or not embedded, are derived from the lease, rental, license, sale, exchange, or other disposition of the QPP. If, however, the benefits and burdens of ownership pass to the customer prior to the installation of the QPP, the taxpayer is performing a service by installing the customer's property. In that case, gross receipts attributable to installation are not derived from the lease, rental, license, sale, exchange, or other disposition of the property, and the taxpayer generally is required under the proposed regulations to allocate gross receipts between the proceeds of sale or disposition of the property (DPGR) and the installation service (non-DPGR). However, the IRS and Treasury Department believe that, because installation is a service component common to sales or dispositions of QPP, if the benefits and burdens of ownership pass to the customer prior to the installation, it is appropriate to treat embedded installation similar to an embedded qualified warranty, qualified delivery, and a qualified operating manual.

A number of commentators suggested that the IRS and Treasury Department expand the exception to the allocation requirement for a qualified warranty to include all services (including training, technical and customer support, and regular maintenance of the property), as well as all nonqualifying property (including purchased spare parts), the charge for which is embedded in the contract price of the lease, rental, license, sale, exchange, or other disposition of QPP, qualified films, and utilities. Other commentators stated that the proposed regulations should adopt principles similar to § 1.482–2(b), so that services that are ancillary and incidental to the sale of QPP, qualified films, and utilities would not be treated as embedded services and no allocation of gross receipts to those services would be required. These commentators believe that footnote 27 in the Conference Report supports such a position in stating that the conferees intend that the Secretary provide guidance regarding the allocation of gross receipts that draws on the principles of section 482. Other commentators stated that, elsewhere in the Code and regulations, transactions are given a single characterization based on their predominant nature and that section 199 should be applied in the same manner. For example, if the predominant nature of a transaction is the sale of property, all gross receipts from the transaction should be treated as proceeds from the sale. Finally, some commentators stated that a taxpayer's treatment of a transaction for financial reporting purposes should govern its characterization for section 199 purposes.

The IRS and Treasury Department infer that the commentators are referring to § 1.482–2(b)(8), which provides that, in general, no separate allocation will be made in connection with ancillary and subsidiary services provided with a transfer of property. Services ancillary and subsidiary to another transaction may be referred to, outside the section 199 context, as embedded services. The IRS and Treasury Department do not intend that services defined as embedded services under section 199 will be treated in the same manner provided in § 1.482–2(b)(8) because such treatment would be generally inconsistent with the intent and purpose of section 199.

The IRS and Treasury Department further believe that the reference to section 482 principles in footnote 27 of the Conference Report reflects an intent to apply section 482 principles

consistently with the general intent and purpose of section 199. The IRS and Treasury Department continue to believe that the statutory language and legislative history require that transactions be bifurcated into qualifying and nonqualifying elements and that gross receipts be allocated accordingly for purposes of section 199. The IRS and Treasury Department further believe that the exceptions to this general rule should be limited. Expanding the special exceptions to include all, or ancillary or incidental, embedded services and embedded nonqualifying property would result in the inclusion in DPGR of gross receipts that the IRS and Treasury Department do not believe were intended to be within the scope of section 199. The legislative history also does not support adopting principles applicable to other Code sections under which a single predominant nature character is assigned to a transaction, or characterizing transactions for purposes of section 199 according to their treatment for financial reporting purposes. Accordingly, the proposed regulations do not adopt these suggestions.

One commentator requested that the proposed regulations clarify whether the embedded services rule is intended to require taxpayers to treat certain service-type activities that take place as part of the MPGE process as embedded services. The proposed regulations clarify that embedded services do not include service-type activities that take place as part of the MPGE process (that is, while the taxpayer is engaged in an MPGE activity with respect to the property and retains the benefits and burdens of ownership of the property). For example, with respect to QPP, activities such as non-construction engineering, materials analysis and selection, subcontractor inspections and approval, routine production inspections, product testing and documentation, and assistance with certain regulatory approvals, if undertaken in connection with a qualifying MPGE activity, are considered part of the MPGE of the QPP and are not considered embedded services. No separate allocation of gross receipts to such activities is required.

Services and nonqualifying property are not considered embedded if they are either separately offered or separately bargained for, or a charge for the service or nonqualifying property is separately stated. Thus, for example, if a charge for freight or delivery is separately stated on an invoice for the sale of an item of QPP, the delivery service is not embedded and gross receipts attributable to that service are non-DPGR, even if the purchaser does not have the option of refusing the service. Further, separately stated or bargained for amounts will not be respected unless they reflect the fair market value of the service or nonqualifying property. For example, if a taxpayer offers contracts to customers that include a cellular phone priced on the invoice at $595 and three years of cellular telephone service priced on the invoice at $5, the $5 stated amount for the service will only be respected if it represents an allocation of gross receipts consistent with the principles of section 482.

Gross receipts attributable to embedded services, embedded nonqualifying property, or any other embedded element (other than a qualified warranty, qualified delivery, qualified installation, and a qualified operating manual) may be considered DPGR under the 5 percent de minimis exception. The proposed regulations clarify that, with respect to the de minimis exception, taxpayers should apply the 5 percent against the total amount of the gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the item of QPP, qualified films, or utilities. The total amount of DPGR includes gross receipts attributable to a qualified warranty, qualified delivery, qualified installation, and/or a qualified operating manual that are treated as DPGR with respect to that item. In the case of a lease or an installment sale, the de minimis exception is applied by taking into account the total amount of gross receipts under the lease or installment sale that are attributable to the item of QPP, qualified films, or utilities.

Under the proposed regulations, as under Notice 2005–14, applicable Federal income tax principles apply in determining whether a transaction (or any part of a transaction) is, in substance, a lease, rental, license, sale, exchange, or other disposition, or whether it is a service. For this purpose, section 3.04(7)(a) of Notice 2005–14 cites Rev. Rul. 88–65 (1988–2 C.B. 32), and describes that revenue ruling as treating a short-term rental as a service. Many commentators asked that the proposed regulations clarify that not all short-term rentals will be regarded as services for purposes of section 199. They observed that Rev. Rul. 88–65 involves the lease of automobiles and trucks on a daily basis (normally for not more than one week), and that the taxpayer performs significant services in connection with the vehicle, including maintenance and repairs, and pays all taxes and insurance on the vehicle. The IRS and Treasury Department acknowledge that the short-term nature of a transaction does not, by itself, render the transaction a service for purposes of section 199 and that many transactions include both service and property rental elements. Therefore, the proposed regulations clarify that, in such cases, taxpayers must allocate gross receipts between the qualifying rental of QPP or qualified films (DPGR) and the non-qualifying services (non-DPGR). The allocation must be based on the facts and circumstances of each transaction. Generally, in the case of short-term transactions, such as those described in Rev. Rul. 88–65, in which significant services are provided in connection with the property, the transaction will consist mostly of services.

Not every transaction in which property is used in connection with providing a service to customers, however, constitutes a mixture of services and rental for which allocation of gross receipts is appropriate. For example, assume that a taxpayer operates a video game arcade that features video game machines that the taxpayer MPGE. The machines remain in the taxpayer's possession during the customers' use. Gross receipts derived from customers' use of the machines at the taxpayer's arcade are not derived from the lease, rental, license, sale, exchange, or other disposition of the machines. Rather, the machines are used to provide a service and, thus, the gross receipts are non-DPGR.

A number of commentators objected to the position taken in section 4.04(7)(d) of Notice 2005–14 that gross receipts from Internet access services, online services, customer support, telephone services, games played through a website, provider-controlled software online access services, and other services are not derived from a lease, rental, license, sale, exchange, or other disposition of the software. Consistent with the notice, the proposed regulations reflect the position that the use of online computer software does not rise to the level of a lease, rental, license, sale, exchange, or other disposition as required under section 199 but is instead a service. This is the case even if the customer must agree to terms and conditions (which may be termed a *license* by the software provider) before using the software online, or receive enabling software to facilitate the customer's use of the primary software on the customer's hardware.

If gross receipts attributable to the use of online software were permitted to qualify as DPGR because the same or similar software also is available to

customers on disk or by download, different items of software available online would be subject to disparate treatment under section 199. In addition, if online software were permitted to qualify as DPGR, it would be difficult to distinguish this online software from software that is used to facilitate a service. The IRS and Treasury Department are requesting comments in the Request for Comments section on this issue.

One commentator suggested that the term lease, rental, license, sale, exchange, or other disposition, especially the term other disposition, was intended to be interpreted broadly to include gross receipts from any means of commercialization of property, whether or not an actual transfer of the property occurs. Another commentator noted that section 3.04(7)(d) of Notice 2005–14 states that gross receipts derived by a taxpayer from software that is merely offered for use to customers online for a fee are non-DPGR, and suggested that if the software is also offered to customers on disk or by download, then gross receipts for online use of otherwise qualifying software would be DPGR. The commentator also noted that the same section provides that a ''service provided using computer software that does not involve a transfer of the computer software does not result in [DPGR],'' and suggested that this language implies that if the software is not used in providing a service, no transfer is required for purposes of section 199. The IRS and Treasury Department did not intend the results suggested by the commentators and the proposed regulations have been clarified as necessary.

A number of commentators requested clarification and expansion of the rule in Notice 2005–14 that treats advertising receipts attributable to the sale or other disposition of newspapers and magazines as DPGR. Notice 2005–14 explains that advertising receipts in this context are inextricably linked to the gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the newspapers and magazines. In response to comments, the proposed regulations clarify that this rule also applies, under the same rationale, to advertising receipts relating to telephone directories and periodicals, whereby a taxpayer's gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the telephone directories or periodicals that are MPGE in whole or in significant part within the United States includes advertising income from advertisements placed in those media, but only to the extent the gross receipts, if any, derived from the lease, rental, license, sale, exchange, or other disposition of the telephone directories or periodicals are DPGR. The proposed regulations clarify that advertising revenue for advertising in online newspapers and periodicals is non-DPGR, because any underlying receipts from the property itself are non-DPGR, as there is no lease, rental, license, sale, exchange, or other disposition of such property. The proposed regulations provide similar treatment for gross receipts attributable to product placements in a qualified film. The gross receipts attributable to product placements will be treated as DPGR, but (as with newspapers) only if the gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the qualified film are DPGR. Thus, for product placement revenue to be derived from a qualified film, there must be a lease, rental, license, sale, exchange, or other disposition of the qualified film.

Section 3.04(9)(a) of Notice 2005–14 provides that revenue from the licensing of film characters is not derived from the lease, rental, license, sale, exchange, or other disposition of a qualified film. One commentator stated that this treatment is inconsistent with the income forecast method, and that revenue from licensing of film-related intangibles is inextricably linked to (and therefore should be treated as derived from) the qualified film. The proposed regulations do not adopt this comment. Section 199(c)(4)(A)(i)(II) clearly requires that receipts must be derived from a lease, rental, license, sale, exchange, or other disposition of a qualified film to be DPGR. Receipts derived from the licensing of related intangibles, including film characters, trademarks, and trade names, do not meet this requirement. Further, the IRS and Treasury Department do not agree that receipts derived from licensing of film-related intangibles are inextricably linked to the gross receipts derived from a qualified film.

Some commentators objected to the rule in section 4.04(7)(a) of Notice 2005–14 that provides that if a taxpayer exchanges QPP MPGE by the taxpayer in whole or in significant part within the United States for other property in a taxable exchange, the value of the property received by the taxpayer is DPGR; whereas any gross receipts derived from a subsequent sale by the taxpayer of the acquired property are non-DPGR because the taxpayer did not MPGE the acquired property. The commentators noted that in their industry, fungible commodities held for sale to customers are exchanged routinely between producers as a practical means of avoiding logistical problems in meeting customers' needs and reducing transportation and storage costs. The commentators noted that these exchanges typically are not treated as taxable exchanges on the parties' financial records. The commentators requested that the proposed regulations instead provide that if the property relinquished in the exchange is QPP, qualified films, or utilities, then the property received in the exchange should be treated as QPP, qualified films, or utilities and gross receipts derived from the subsequent sale of that property should be treated as DPGR. Another commentator suggested that this treatment be applied only to nontaxable exchanges.

The proposed regulations do not adopt these suggestions. The IRS and Treasury Department believe that the character of property as having been MPGE in whole or in significant part by the taxpayer within the United States is not an attribute of the property, like basis and holding periods, that may be substituted with the transfer of the property. The IRS and Department Treasury believe that the commentators' interpretations are inconsistent with section 199(c)(4)(A)(i)(I).

Commentators requested that the IRS and Treasury Department clarify whether gross receipts from mineral royalties and net profits interests are properly treated as DPGR. Mineral royalties, including net profits interests, are returns on passive interests in mineral properties, the owner of which makes no expenditure for operation or development. The courts and the IRS have long considered these types of income to be in the nature of rent (see, for example, *Kirby Petroleum Co.* v. *Comm'r*, 326 U.S. 599 (1946)). Accordingly, the proposed regulations in § 1.199–3(h)(9) provide that gross receipts from mineral interests and net profits interests other than operating or working interests are not treated as DPGR.

Definition of Manufactured, Produced, Grown, or Extracted

Section 4.04(3)(b) of Notice 2005–14 provides that a taxpayer that MPGE QPP for the taxable year should treat itself as a producer under section 263A with respect to the QPP for the taxable year unless the taxpayer is not subject to section 263A. In response, commentators questioned whether all taxpayers that are subject to section 263A are considered to have MPGE QPP for purposes of section 199. Taxpayers who do not MPGE QPP may nevertheless be subject to section 263A. For example, a taxpayer that has

property produced for it under a contract is considered a producer of property under section 263A, but may not be considered as having MPGE property for purposes of section 199 if it does not have the benefits and burdens of ownership of the property while it is being produced. Additionally, in some circumstances a taxpayer that manufactures property for a customer pursuant to a contract may be considered the producer of the property for purposes of section 263A and not to have MPGE the property for purposes of section 199. Accordingly, not all taxpayers that are subject to section 263A are considered to have MPGE QPP for purposes of section 199.

Commentators also have questioned whether a taxpayer that engages in certain production activities that are exempt from section 263A (for example, developing computer software under Rev. Proc. 2000–50 (2000–1 C.B. 601), producing property pursuant to a long-term contract under section 460, or farming exempt under section 263A(d)) must treat itself as a producer under section 263A if the taxpayer wants to be treated as MPGE QPP for purposes of section 199. The proposed regulations in § 1.199–3(d)(4) provide that a taxpayer that has MPGE QPP for the taxable year should treat itself as a producer under section 263A with respect to the QPP for the taxable year unless the taxpayer is not subject to section 263A. A taxpayer whose MPGE activity is exempt from section 263A is not required to change its method of accounting under section 263A to treat itself as engaged in the MPGE of QPP for purposes of section 199.

Commentators requested clarification as to whether a reseller that engages in de minimis production activities or that has property produced for it under contract, which constitutes the MPGE of QPP under section 199, is precluded from using the simplified resale method provided by § 1.263A–3(d). Section 1.263A–3(a)(4)(ii) provides that a reseller with de minimis production activities is permitted to use the simplified resale method. Likewise, § 1.263A–3(a)(4)(iii) provides that a reseller otherwise permitted to use the simplified resale method is permitted to use the method if it has personal property produced for it under a contract if the contract is entered into incident to its resale activities and the property is sold to its customers. The section 263A consistency rule provided in § 1.199–3(d)(4) of the proposed regulations does not affect the rules provided in § 1.263A–3. Accordingly, a reseller with de minimis production or that has property produced for it under a contract that is considered the MPGE of QPP for purposes of section 199 is not precluded from using the simplified resale method if the taxpayer meets the requirements of § 1.263A–3(a)(4)(ii) or (iii).

Definition of By the Taxpayer

Section 1.199–3(e)(1) of the proposed regulations provides that, with the exception of rules that are applicable to an EAG, certain oil and gas partnerships described in § 1.199–3(h)(7), EAG partnerships described in § 1.199–3(h)(8), and certain government contracts described in § 1.199–3(e)(2), only one taxpayer may claim the section 199 deduction with respect to the MPGE of QPP. If one taxpayer MPGE QPP pursuant to a contract with another person, then only the taxpayer that has the benefits and burdens of ownership of the property under Federal income tax principles during the time the property is MPGE will be considered to have MPGE the QPP. In contrast, § 1.263A–2(a)(1)(ii)(B) provides that property produced for the taxpayer under a contract is considered as produced by the taxpayer to the extent the taxpayer makes payments or otherwise incurs costs with respect to the property, even if the taxpayer is not the owner of the property while the property is being produced. Commentators questioned why a similar rule does not apply in the context of section 199. The rule provided by § 1.263A–2(a)(1)(ii)(B) is derived from section 263A(g)(2). That section specifically provides that a taxpayer is treated as producing property produced for it under a contract to the extent that it has made payments or incurred costs with respect to the contract. In contrast, section 199(c)(4)(A)(i) provides that DPGR only includes gross receipts of the taxpayer that are derived from any lease, rental, license, sale, exchange, or other disposition of QPP MPGE by the taxpayer in whole in significant part within the United States. Accordingly, the proposed regulations do not contain a provision that is analogous to § 1.263A–2(a)(1)(ii)(B).

While sections 199, 263A, and 936 all have benefits and burdens standards, the standard under section 199 is not the same as those under sections 263A and 936. Commentators suggested that the proposed regulations adopt the broader standard under § 1.263A–2(a)(1)(ii)(A) that provides that a taxpayer is not considered to be producing property unless the taxpayer is considered the owner of the property produced under Federal income tax principles. The determination of whether a taxpayer is considered an owner is based on all of the facts and circumstances, including the various benefits and burdens of ownership vested with the taxpayer. Because the standard under the section 263A regulations is broad, it has been interpreted to allow two taxpayers to be considered the producer of the same property. Compare, for example, *Suzy's Zoo* v. *Comm'r*, 114 T.C. 1 (2000), *aff'd* 273 F.3d 875 (9th Cir. 2001) and *Golden Gate Litho* v. *Comm'r*, T.C. Memo (1998–184).

The IRS and Treasury Department continue to believe that the requirement of section 199(c)(4)(A)(i) that property be MPGE by the taxpayer means that only one taxpayer may claim the section 199 deduction with respect to the same function performed with respect to the same property. Therefore, it would be inappropriate to adopt the standard under the section 263A regulations. In addition, this interpretation is supported by the Congressional Letter that states the Treasury Department has the authority to prescribe rules to prevent the section 199 deduction from being claimed by more than one taxpayer with respect to the same economic activity described in section 199(c)(4)(A)(i). Thus, consistent with Notice 2005–14, the proposed regulations in § 1.199–3(e)(1) provide that only one taxpayer may claim the section 199 deduction with respect to any MPGE activity.

Commentators also proposed other alternatives to the benefits and burdens standard, such as looking to the person that has the economic risks and benefits, adopting the qualified research rules under § 1.41–2(e)(2), providing safe harbors based on contract terms, treating the person that arranges for the acquisition of the property as the owner, and looking to the person that controls the process by which the property is MPGE. The proposed regulations do not adopt any of these suggestions because the IRS and Treasury Department believe that there is considerable variation in the types of contract manufacturing situations. Therefore, the proposed regulations contain the same benefits and burdens standard used in Notice 2005–14 because it is a standard that the IRS and Treasury Department believe covers all of the varied factual situations.

Commentators requested that the proposed regulations provide examples of how to apply the benefits and burdens standard. The proposed regulations contain examples illustrating contract manufacturing situations in which the taxpayer with the benefits and burdens of ownership

under Federal income tax principles is treated as manufacturing the QPP.

In the Congressional Letter, the Treasury Department was advised that gross receipts derived from certain contracts to manufacture or produce property for the Federal government are derived from the sale of such property and, therefore, are DPGR. The proposed regulations in § 1.199–3(e)(2) provide that a taxpayer will be treated as meeting the by the taxpayer requirement if the QPP, qualified films, or utilities are MPGE or otherwise produced in the United States by the taxpayer pursuant to a contract with the Federal government and the Federal Acquisition Regulation requires that title or risk of loss with respect to the QPP, qualified films, or utilities be transferred to the Federal government before the MPGE or production of the QPP, qualified films, or utilities is complete.

In Whole or In Significant Part

Under section 199(c)(4)(A)(i)(I), QPP must be MPGE in whole or in significant part by the taxpayer within the United States. The proposed regulations in § 1.199–3(f)(1) clarify that the in whole or in significant part requirement applies to both the by the taxpayer requirement and the within the United States requirement.

Section 4.04(5)(b) of Notice 2005–14 provides that QPP will be treated as having been MPGE in significant part by the taxpayer within the United States if the MPGE of the QPP performed within the United States is substantial in nature. Design and development costs do not qualify as substantial in nature for any QPP other than computer software and sound recordings. The proposed regulations in § 1.199–3(f)(2) substitute research and experimental expenditures under section 174 for design and development costs.

Section 4.04(5)(c) of Notice 2005–14 provides that a taxpayer will be treated as having MPGE property in whole or in significant part within the United States if, in connection with the property, conversion costs (direct labor and related factory burden) to MPGE the property are incurred by the taxpayer within the United States and the costs account for 20 percent or more of the total CGS of the property. The proposed regulations in § 1.199–3(f)(3) provide that, in the case of tangible personal property, research and experimental expenditures under section 174 and any other costs of creating intangibles may be excluded from total CGS for purposes of the safe harbor.

A commentator suggested that a taxpayer's activity within the United States that is critical to the functionality or nature of property should be considered to meet the in significant part requirement under section 199(c)(4)(A)(i)(I) even if the activity is not substantial in nature. The proposed regulations do not adopt this suggestion because the IRS and Treasury Department do not believe that this is an accurate measurement of the degree of activity required to satisfy the in whole or in significant part requirement.

Qualifying Production Property

Commentators requested that the IRS and Treasury Department reconsider the rule under section 4.04(8)(c) and (d) of Notice 2005–14 which provides that, if the medium in which computer software or sound recordings are contained is tangible, then such medium is considered tangible personal property for purposes of section 199. This rule has been removed and the proposed regulations in § 1.199–3(i)(5) provide that if a taxpayer MPGE computer software or sound recordings that the taxpayer fixed on, or added to, tangible personal property (for example, a computer diskette or an appliance), then the tangible medium with the computer software or sound recordings may be treated by the taxpayer as computer software or sound recordings, as applicable. However, the proposed regulations provide that, if a taxpayer treats the tangible medium as computer software or sound recordings, any costs under section 174 attributable to the tangible medium are not considered in determining whether the taxpayer's activity is substantial in nature under § 1.199–3(f)(2) or conversion costs under § 1.199–3(f)(3). In addition, because a taxpayer may MPGE tangible personal property, but not computer software or sound recordings that the taxpayers fixes on, or adds to, the tangible personal property MPGE by the taxpayer, the proposed regulations provide that the computer software or sound recordings may be treated by the taxpayer as tangible personal property.

Commentators requested that the proposed regulations clarify whether the exceptions from computer software under section 168(i)(2)(B)(iv) apply to computer software under section 199. In response to this comment, the proposed regulations provide in § 1.199–3(i)(3)(i) that these exceptions do not apply for purposes of section 199 and computer software also includes the machine-readable code for video games and similar programs, for equipment that is an integral part of other property, and for typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, regardless of whether the code is designed to operate on a computer (as defined in section 168(i)(2)(B)). Computer programs of all classes, for example, operating systems, executive systems, monitors, compilers and translators, assembly routines, and utility programs as well as application programs, are included.

A commentator requested that the proposed regulations provide that the creation and licensing of copyrighted business information reports constitutes the MPGE of QPP. Formerly distributed in hard copy, this information is now generally distributed electronically. Customers are required to use the information only for their own use, and no copyright is transferred to them. The commentator contends that, while the activity of creating the business information reports provided to customers is not a production activity in the traditional sense, the definition of MPGE is broad enough to encompass this activity. The IRS and Treasury Department do not agree with this comment because creating a database of business information is not MPGE, the database is not QPP, and the business information reports are not QPP MPGE by the taxpayer.

Qualified Films

Similar to the rules for computer software, section 4.04(9)(a) of Notice 2005–14 provides that if a medium on which a qualified film is fixed is tangible (such as a DVD), the property consists of both a qualified film and tangible personal property. The notice contains examples in which taxpayers that either produce a qualified film and purchase the tangible medium, or MPGE the tangible medium and license the qualified film, must allocate gross receipts between the tangible medium and the qualified film. For the reasons stated under the discussion of computer software, the proposed regulations allow certain taxpayers to treat such combined property as either tangible personal property or a qualified film, as applicable.

One commentator requested that the proposed regulations clarify the requirement that 50 percent of the total compensation relating to the production of the film be compensation for services performed in the United States by actors, production personnel, directors, and producers. Specifically, the commentator requested that the phrase ''total compensation relating to the production of the film'' be interpreted to mean compensation for services performed only by actors, production personnel, directors, and producers. The commentator further requested that the term ''compensation'' be interpreted to

include all compensation (not just W–2 wages) that is paid to these individuals and that is required to be capitalized by film producers under section 263A and § 1.263A–1(e)(2) and (3). These suggestions have been adopted in the proposed regulations.

Definition of Construction Performed in the United States

Section 4.04(11)(a) of Notice 2005–14 defines the term ''construction'' to mean the construction or erection of real property by a taxpayer that is in a trade or business that is considered construction for purposes of the North American Industry Classification System (NAICS). Commentators asked how a taxpayer in multiple trades or businesses determines if it is in a construction NAICS code. The proposed regulations clarify that in order for a taxpayer to be considered in a construction NAICS code, it must be engaged in a construction trade or business (but not necessarily its primary trade or business) on a regular and ongoing basis. The determination of whether an entity is in a NAICS code is generally tested on an entity-by-entity basis. Under this rule, a member of an EAG must perform the construction activity in order for its gross receipts to qualify as DPGR from construction. See § 1.199–7(a)(3). In addition, the taxpayer must actually perform the construction activity. For example, if a taxpayer in a construction NAICS code hired an unrelated general contractor to construct a building, the gross receipts derived by the taxpayer from the sale of the building would not be DPGR because the taxpayer did not construct the building. The proposed regulations provide an example to illustrate this rule.

Commentators also asked that the proposed regulations clarify whether eligible construction activities are limited to a specific NAICS code. Section 1.199–3(l)(1)(i) provides that a trade or business that is considered construction for purposes of the NAICS codes means a construction activity under the two-digit NAICS code of 23 and any other construction activity in any other NAICS code relating to the construction of real property. For example, a construction activity relating to the construction of real property that is not under the two-digit NAICS code of 23 but which qualifies as an eligible construction activity would include the construction of oil and gas wells for NAICS code 213111 (drilling oil and gas wells) and 213112 (support activities for oil and gas operations). Commentators also asked that the proposed regulations include a listing of construction activities relating to oil and gas wells. In response to this request, the proposed regulations provide, as a matter of administrative grace, that qualifying construction activities also include activities relating to drilling an oil well and mining, and include any activities treated by the taxpayer as intangible drilling and development costs under section 263(c) and § 1.612–4 and development expenditures for a mine or natural deposit under section 616.

Commentators contend that gross receipts attributable to the leasing or rental of constructed real property qualify as DPGR because the right to use constructed property represents one right in the bundle of rights derived from the construction of real property. The proposed regulations do not adopt this interpretation because gross receipts derived from the rental of real property that a taxpayer constructs are not derived from construction, but are instead compensation for the use or forbearance of the property. Similarly, gross receipts derived from renting or leasing equipment such as bulldozers and generators to contractors for use in the construction of real property are non-DPGR (assuming the rental companies do not manufacture the equipment).

Section 4.04(11)(a) of Notice 2005–14 contains a safe harbor rule for determining when tangible personal property that is sold as part of a construction project may be considered real property. If more than 95 percent of the total gross receipts derived by a taxpayer from a construction project are derived from real property (as defined in § 1.263A–8(c)), then the total gross receipts derived by the taxpayer from the project are DPGR from construction. Commentators stated that it was unclear what items of tangible personal property are included in this rule (for example, small or major appliances, home theaters, and fixtures installed by a builder) and whether it was intended that land be included for purposes of this safe harbor. Consequently, this rule has been replaced in the proposed regulations with a *de minimis* exception in § 1.199–3(l)(1)(ii). Accordingly, if less than 5 percent of the total gross receipts derived by a taxpayer from a construction project are derived from activities other than the construction of real property in the United States (for example, from non-construction activities, the sale of tangible personal property, or land) then the total gross receipts derived by the taxpayer from the project are DPGR from construction.

Many commentators suggested that the proposed regulations treat gross receipts attributable to the sale or other disposition of land as DPGR derived from construction of real property. Commentators also suggested that construction begins as soon as production activities begin, that is, when land is acquired and the entitlement process, such as obtaining proper zoning and permits, commences in connection with construction of real property. The proposed regulations do not adopt these suggestions. The IRS and Treasury Department continue to believe that Congress intended the benefit under section 199 only for construction services performed in the United States. Taxpayers do not construct land and thus any gain attributable to the disposition of land (including zoning, planning, entitlement costs and other costs capitalized to the land such as the demolition of structures under section 280B) is not eligible for the section 199 deduction. Commentators also argue that the land exclusion creates an administrative and financial burden because a valuation will be necessary for any sale of real property that includes land. To address the administrative burden in identifying and valuing the gross receipts attributable to land in connection with qualifying construction activities, the proposed regulations provide a safe harbor in § 1.199–3(l)(5)(ii). Under this safe harbor, a taxpayer may allocate gross receipts between the proceeds from the sale, exchange, or other disposition of real property constructed by the taxpayer and the gross receipts attributable to the sale, exchange, or other disposition of land by reducing its costs related to DPGR in § 1.199–4 by costs of the land and any other costs capitalized to the land (collectively, land costs) (including land costs in any common improvements as defined in section 2.01 of Rev. Proc. 92–29 (1992–1 C.B. 748)), and by reducing its DPGR from qualifying construction activities by those land costs plus a specified percentage. The percentage is based on the number of years that elapse between the date the taxpayer acquires the land, including the date the taxpayer enters into the first option to acquire all or a portion of the land, and ends on the date the taxpayer sells each item of real property on the land. The percentage is 5 percent for years zero through 5; 10 percent for years 6 through 10; and 15 percent for years 11 through 15. Land held by a taxpayer for 16 or more years is not eligible for the safe harbor and the taxpayer must allocate gross receipts between the land and the qualifying real property. For example, if a taxpayer acquires land in 2001 and constructs houses that it sells in 2005, 2008, and

2012, the houses sold in 2005 are subject to the 5 percent reduction; the houses sold in 2008 are subject to the 10 percent reduction; and the houses sold in 2012 are subject to the 15 percent reduction.

Commentators suggested that developers of raw land should be entitled to a section 199 deduction for improvements to land such as building roads, sidewalks, and installing utilities. In addition, they suggested that entitlements such as zoning, permits, and surveys that add value to the land should be included in DPGR similar to the treatment of design and development costs for software and sound recordings. The proposed regulations provide that a taxpayer in a construction NAICS code that sells developed land will have DPGR to the extent the receipts are attributable to real property such as infrastructure but not to the land and any entitlements attributable to the land. The proposed regulations provide examples in § 1.199–3(l)(5)(iii) to illustrate this rule.

Commentators suggested that the proposed regulations extend the embedded services exception for qualified warranties in connection with the sale of property to construction warranties. The IRS and Treasury Department agree with this suggestion. Accordingly, § 1.199–3(l)(5)(i) provides DPGR derived from the construction of real property includes gross receipts from any warranty that is provided in connection with the construction of the real property if, in the normal course of the taxpayer's business, the charge for the construction warranty is included in the price for the construction project and the construction warranty is neither separately offered by the taxpayer nor separately bargained for with the customer (that is, the customer cannot purchase the constructed real property without the construction warranty).

Engineering and Architectural Services

Section 4.04(12)(a) of Notice 2005–14 provides that DPGR includes gross receipts derived from engineering or architectural services performed in the United States for real property construction projects in the United States. Commentators stated that the definition of engineering and architectural services should not be limited to real property because this limitation is inconsistent with the rules for engineering and architectural services under the domestic international sales corporation, foreign sales corporation, and extraterritorial income exclusion provisions. The IRS and Treasury Department continue to believe that the statutory language in section 199(c)(4)(A)(iii) requires that only engineering and architectural services relating to real property qualify for the section 199 deduction and that the same rules relating to construction of real property apply for engineering or architectural services. In addition, the Blue Book at page 172 n. 292, states that DPGR includes gross receipts derived from the engineering or architectural services performed with respect to real property only. Thus, DPGR only includes gross receipts derived from engineering or architectural services performed in the United States for the construction of real property in the United States. In addition, the IRS and Treasury Department believe that, consistent with the rules for construction activities, a taxpayer performing engineering and architectural services must be in a trade or business described in an engineering or architectural NAICS code. Accordingly, the proposed regulations require that, at the time the taxpayer performs the engineering or architectural services, the taxpayer must be in a trade or business on a regular and ongoing basis (but not necessarily its primary trade or business) that is considered engineering or architectural services for purposes of the NAICS codes, for example NAICS codes 541330 (engineering services) or 541310 (architectural services).

A commentator also requested clarification of whether a structure enclosing an electric generation station as described in Rev. Rul. 69–412 (1969–2 C.B. 2) would be considered real property for purposes of section 199(c)(4)(A)(iii). In that revenue ruling, the structure qualified as section 38 property for investment credit purposes. The revenue ruling does not determine whether the property was real or personal property. Under section 4.04(11)(a) of Notice 2005–14, real property includes residential and commercial buildings including items that are structural components of such buildings and inherently permanent structures other than tangible personal property in the nature of machinery. The proposed regulations in § 1.199–3(l)(1)(i) retain this language. Thus, a structure enclosing an electric generation station as described in Rev. Rul. 69–412 is treated as real property for purposes of section 199(c)(4)(A)(iii).

In addition, similar to the rules for construction, the determination of whether an entity is in an engineering or architectural NAICS code is made on an entity-by-entity basis. Under this rule, a member of an EAG must perform the engineering or architectural services in order for its gross receipts to qualify as DPGR from engineering or architectural services. See § 1.199–7(a)(3). In addition, the taxpayer must actually perform the engineering or architectural services.

One commentator pointed out that the requirement in section 4.04(12)(a) of Notice 2005–14 that a taxpayer must substantiate that the engineering or architectural services relate to a construction project in the United States is unnecessary because taxpayers are already required to identify and allocate gross receipts attributable to DPGR based upon a reasonable method satisfactory to the Secretary for purposes of determining QPAI. Because there was no intention on the part of the IRS and Treasury Department to create an additional substantiation requirement for engineering and architectural services, this additional substantiation requirement is not required under the proposed regulations.

Commentators requested clarification of whether gross receipts attributable to feasibility studies, for example, planning possible road or building configurations for a potential real property development project, is a qualifying activity. The commentators state that engineering and architectural firms are often hired for these studies to determine a project's practicability. Accordingly, the proposed regulations provide in § 1.199–3(m)(1) that DPGR includes gross receipts derived from engineering or architectural services, including feasibility studies for a construction project in the United States, even if the planned construction project is not undertaken or is not completed.

Food and Beverages

Section 199(c)(4)(B)(i) provides that DPGR does not include gross receipts of the taxpayer that are derived from the sale of food and beverages prepared by the taxpayer at a retail establishment. Section 4.04(13) of Notice 2005–14 defines a ''retail establishment'' as real property leased, occupied, or otherwise used by the taxpayer in its trade or business of selling food or beverages to the public at which retail sales are made. One commentator stated that food carts and portable food stands should not be considered retail establishments because they do not constitute real property. The IRS and Treasury Department believe that the term ''retail establishment'' is intended to be interpreted broadly to include any facility at which the taxpayer prepares food or beverages and makes retail sales of the food or beverages to the public. See Conference Report at page 272 (footnote 27) (retail establishment not

limited to establishments at which customers dine on premises or to those engaged primarily in the dining trade). Accordingly, the proposed regulations do not adopt this suggestion, and the term ''retail establishment'' is clarified to include both real and personal property. In addition, a facility at which food and beverages are prepared solely for take out service or delivery is a retail establishment (for example, a caterer).

Consistent with Notice 2005–14, the proposed regulations provide that if a taxpayer's facility is a retail establishment, then, as a matter of administrative grace, a taxpayer is permitted to allocate its gross receipts between gross receipts derived from the wholesale sale of the food and beverages prepared at the retail establishment (which are DPGR, assuming all the other requirements of section 199(c) are met) and the gross receipts derived from the retail sale of the food and beverages prepared and sold at the retail establishment (which are non-DPGR). For this purpose, wholesale sales are defined as sales of food and beverages to be resold by the purchaser.

One commentator requested clarification how the retail establishment exception applies in the case of wineries. While producers of distilled spirits, wines, and beer may conduct retail sales of their products on their premises, such sales do not transform the entire premises of the distilled spirits plant, bonded wine cellar (or bonded winery), or brewery into a retail establishment. Chapter 51 of Title 26 of the United States Code, and the implementing regulations found in 27 CFR parts 19, 24, and 25, create clear distinctions between that portion of a distilled spirits plant, winery, or brewery devoted to production activities and the portion devoted to other activities, such as retail sales. Consistent with the treatment of such facilities for purposes of Chapter 51 of Title 26 of the United States Code and the regulations thereunder, the proposed regulations provide that the portion of a distilled spirits plant, bonded winery, or brewery that is restricted to production activities, including the processing and blending of distilled spirits, wine, and beer products, will not be treated as a retail establishment for purposes of section 199(c)(4)(B)(i). Thus, for example, for purposes of section 199, taxpaid wine sold from the taxpaid premises of a bonded winery is not considered to have been produced at a retail establishment because it is considered to have been produced on the bonded premises of the winery. Accordingly, the sales of such wine will be treated as DPGR for purposes of section 199 (assuming all the other requirements of section 199(c) are met). A similar result applies to the sale of taxpaid distilled spirits from the general (taxpaid) premises of a distilled spirits plant, and to the sale of taxpaid beer from the tavern portion of a brewery.

A commentator suggested that the proposed regulations interpret the term *food and beverages* to mean only items prepared by the taxpayer in a single serving size for immediate consumption by the purchaser. The commentator believes that the Conference Report in footnote 27 supports this interpretation because these characteristics are common to the examples that the footnote provides (that is, brewed coffee and venison sausage prepared at a restaurant). The commentator further contends that this interpretation eliminates the distinction between food and beverages prepared off-site (gross receipts from the retail sale of which may be DPGR) and those prepared on-site (gross receipts from the retail sale of which are non-DPGR), a distinction that the commentator believes Congress did not intend.

The IRS and Treasury Department do not believe that the statute or Conference Report supports the commentator's interpretation. If the commentator's interpretation was correct, then gross receipts from the retail sale of the roasted coffee beans in footnote 27 would have qualified as DPGR even if the taxpayer had roasted the beans at its retail establishment because the beans are not sold in single servings for immediate consumption. However, footnote 27 makes clear that the gross receipts attributable to the beans only qualify because the beans were roasted at a facility separate from the retail establishment. Thus, the statute and legislative history clearly provide different treatment for gross receipts attributable to the retail sale of food and beverages prepared at a retail establishment and food and beverages prepared elsewhere.

The same commentator requested clarification of how the food and beverages exception applies to in-store bakeries. Footnote 27 of the Conference Report provides an example of a taxpayer that operates a supermarket that includes an in-store bakery, and provides that the taxpayer may allocate its gross receipts between DPGR and non-DPGR. The commentator believes that the example could be interpreted to mean that all gross receipts allocable to sales (both retail and wholesale) of items prepared in the bakery are non-DPGR. Section 4.04(13) of Notice 2005–14 however, as a matter of administrative grace, permits gross receipts from wholesale sales of food and beverages produced at a retail establishment to qualify as DPGR (if all other requirements of section 199(c) are met), and the proposed regulations retain this rule. Thus, gross receipts from wholesale sales of items produced at the in-store bakery (for example, items sold to restaurants) may qualify as DPGR (if all other requirements of section 199(c) are met). The commentator further stated, consistent with the first comment, that gross receipts from retail sales of bakery products that require further processing by the consumer to be suitable for individual consumption (such as unsliced cakes and unsliced loaves of bread) should not be excluded from DPGR under section 199(c)(4)(B)(i). For the reasons stated above, the IRS and Treasury Department believe that retail sales of these items are subject to that exclusion. Receipts allocable to wholesale sales of these items, however, may qualify as DPGR under the administrative exception, assuming all the other requirements of section 199(c) are met.

Determining Costs

To determine its QPAI for the taxable year, a taxpayer must subtract from its DPGR the amount of CGS allocable to DPGR, the other deductions, expenses, and losses (deductions) directly allocable to DPGR, and a ratable portion of other deductions that are not directly allocable to DPGR or another class of income. A taxpayer's costs must be determined using the taxpayer's methods of accounting for Federal income tax purposes.

Allocation of Cost of Goods Sold

Notice 2005–14 provides that if a taxpayer can identify from its books and records CGS allocable to DPGR, CGS allocable to DPGR is that amount. The Notice also provides that if a taxpayer's books and records do not allow it to identify CGS allocable to DPGR, the taxpayer may use a reasonable allocation method to allocate CGS between DPGR and non-DPGR. The Notice further provides that, if a taxpayer uses a method to allocate gross receipts between DPGR and non-DPGR, then the taxpayer may not use a different method for purposes of allocating CGS.

Commentators suggested that a taxpayer should be permitted to allocate CGS using a reasonable method separate from the method used to allocate gross receipts because using the same allocation method for gross receipts and CGS may not be possible or may distort income. For example, a taxpayer that

can identify from its books and records gross receipts allocable to DPGR may not be able to specifically identify CGS allocable to DPGR. Commentators also questioned whether a taxpayer that can identify from its books and records CGS allocable to DPGR must allocate CGS on such basis when it allocates gross receipts using a different method. The proposed regulations clarify that if a taxpayer does, or can without undue burden or expense, specifically identify from its books and records CGS allocable to DPGR, CGS allocable to DPGR is that amount irrespective of whether the taxpayer uses another allocation method to allocate gross receipts between DPGR and other gross receipts. The proposed regulations also clarify that if a taxpayer cannot, without undue burden or expense, use a specific identification method to determine CGS allocable to DPGR, the taxpayer is not required to use a specific identification method to determine CGS allocable to DPGR, but may use some other reasonable method. A taxpayer's use of a method for purposes of allocating CGS between DPGR and non-DPGR that is different from its method for allocating gross receipts between DPGR and non-DPGR will ordinarily not be considered reasonable unless the method for allocating CGS is demonstrably more accurate than the method used to allocate gross receipts.

Commentators also suggested that CGS allocable to DPGR may not be readily ascertainable when a taxpayer uses the last-in, first-out (LIFO) method to account for its inventory. Therefore, commentators requested that a simplified method be provided to allocate CGS between DPGR and non-DPGR when a taxpayer uses the LIFO method to account for its inventory. The proposed regulations provide that a taxpayer that uses the LIFO method to account for its inventory may use any reasonable method to allocate CGS between DPGR and non-DPGR. In addition, the regulations provide simplified methods that a taxpayer may use to allocate CGS when a taxpayer uses the LIFO method to account for its inventories.

The IRS and Treasury Department also received comments requesting clarification of the types of costs that are required to be allocated as CGS allocable to DPGR. In particular, commentators stated that section 263A only requires taxpayers to capitalize costs with respect to inventory on hand at the end of the taxable year and that as a result taxpayers generally do not include indirect costs in CGS, but instead deduct the amount not allocated to ending inventory. Section 263A requires a taxpayer that produces inventory to include in inventory costs the direct costs of producing the property and the property's properly allocable share of indirect costs for purposes of determining both ending inventory and CGS. Consistent with Notice 2005–14, the proposed regulations provide that, for purposes of determining CGS allocable to DPGR, CGS includes the costs that would have been included in ending inventory under the principles of sections 263A, 471, and 472 if the goods sold during the taxable year were on hand at the end of the taxable year. However, a taxpayer is permitted to use any reasonable method to allocate indirect costs properly included in CGS between DPGR and non-DPGR if the taxpayer's books and records do not, or cannot without undue burden or expense, specifically identify CGS allocable to DPGR.

Comments also were received concerning whether a taxpayer is permitted to use a reasonable allocation method to allocate CGS if it uses the simplified production method or simplified resale method for additional section 263A costs. The proposed regulations clarify that a taxpayer that uses either the simplified production method or the simplified resale method for additional section 263A costs may use a reasonable allocation method to allocate both section 471 costs and additional section 263A costs included in CGS. The proposed regulations further provide that if a taxpayer uses the simplified production method or the simplified resale method to allocate additional section 263A costs to ending inventory, additional section 263A costs ordinarily should be allocated in the same proportion as section 471 costs are allocated.

Allocation and Apportionment of Deductions

Consistent with Notice 2005–14, the proposed regulations provide three methods for allocating and apportioning deductions. However, as described below, modifications have been made in these proposed regulations to the qualification requirements of the simplified deduction method and the small business simplified overall method.

The first method, the ''section 861 method,'' is required to be used by a taxpayer, unless the taxpayer is eligible and chooses to use either the simplified deduction method or the small business simplified overall method. Under the section 861 method, section 199 is treated as an operative section described in § 1.861–8(f). Accordingly, a taxpayer determines the deductions allocated and apportioned to DPGR by applying the allocation and apportionment rules provided by §§ 1.861–8 through 1.861–17 and §§ 1.861–8T through 1.861–14T (the section 861 regulations), subject to certain special rules. The IRS and Treasury Department recognize that the allocation and apportionment rules of the section 861 method may be burdensome to certain taxpayers, particularly smaller taxpayers, that otherwise would not be required to use these rules. Accordingly, the proposed regulations provide two alternative methods, the simplified deduction method and the small business simplified overall method, with a goal of minimizing the need for smaller taxpayers to devote additional resources to compliance.

Under the ''simplified deduction method,'' a taxpayer's deductions are apportioned between DPGR and other receipts based on relative gross receipts. The simplified deduction method does not apply to the allocation of CGS. Notice 2005–14 permits only taxpayers with average annual gross receipts of $25,000,000 or less to use the simplified deduction method. Several commentators requested that the simplified deduction method also be made available to taxpayers with gross receipts in excess of $25,000,000. Many of these comments were from taxpayers that have not in the past been required to allocate and apportion deductions under the section 861 regulations. Some commentators suggested that the simplified deduction method be used for all costs, except for limited identified costs such as interest, for which the section 861 method would continue to apply. Still other commentators suggested that taxpayers be allowed to use other existing cost allocation methods, such as those under section 263A or under other government regulatory procedures.

In response to these comments, the IRS and Treasury Department have modified the eligibility requirements for the simplified deduction method. Under the proposed regulations, a taxpayer may use the simplified deduction method if it has average annual gross receipts of $25,000,000 or less, or total assets at the end of the taxable year of $10,000,000 or less. However, the IRS and Treasury Department still believe that for taxpayers above this threshold the section 861 method is the appropriate method of allocating and apportioning deductions for purposes of determining QPAI. Furthermore, the alternative allocation methods suggested by commentators would each require additional rules and guidance to address

the interaction of the suggested methods with other Federal income tax rules and would result in administrative complexity and inefficiency. The IRS and Treasury Department believe that use of the section 861 method will result in an appropriate cost allocation and apportionment for purposes of section 199 and will be easier administratively for both taxpayers and the IRS than any new, equally comprehensive cost allocation and apportionment rules that might be created.

Section 1.199–4(f) of the proposed regulations provides that a qualifying small taxpayer may use the ''small business simplified overall method'' to apportion CGS and deductions to DPGR. Under Notice 2005–14, a qualifying small taxpayer is a taxpayer that has average annual gross receipts of $5,000,000 or less or a taxpayer that is eligible to use the cash method as provided in Rev. Proc. 2002–28 (2002–1 C.B. 815). The IRS and Treasury Department are concerned that the $5,000,000 average annual gross receipts threshold without further modification could be used by large taxpayers to circumvent the requirements to allocate and apportion deductions using the section 861 method. As a result, a deduction limitation has been added to this method. In addition, commentators requested that the definition of qualifying small taxpayer for purposes of the small business simplified overall method be expanded to include farmers that are not required to use the accrual method under section 447. The proposed regulations incorporate this suggestion. Accordingly, the proposed regulations provide that a qualifying small taxpayer is a taxpayer that; (1) has both average annual gross receipts of $5,000,000 or less, and CGS and deductions (excluding NOL deductions and deductions not attributable to the conduct of a trade or business) for the current taxable year of $5,000,000 or less; (2) is engaged in the trade or business of farming that is not required to use the accrual method under section 447; or (3) is eligible to use the cash method as provided in Rev. Proc. 2002–28.

Notice 2005–14 specifically requested comments on whether taxpayers should be able to change between the three cost allocation methods of section 199 on amended returns and whether there should be restrictions on a taxpayer's ability to change from one method to another. Several commentators suggested that a taxpayer should be allowed to change its cost allocation method on an amended return and that a taxpayer should be able to annually choose to use any of the three methods. The IRS and Treasury Department agree that a taxpayer that qualifies to use a particular allocation and apportionment method should be able to change to that method at any time. Accordingly, the proposed regulations generally provide that a taxpayer eligible to use the simplified deduction method may choose at any time to use the simplified deduction method or the section 861 method for a taxable year. A taxpayer eligible to use the small business simplified overall method may choose at any time to use the small business simplified overall method, the simplified deduction method, or the section 861 method for a taxable year. This rule does not affect, however, any restrictions or limitations that apply within the section 861 method.

Pass-Thru Entities

Section 199 applies at the owner level in a manner consistent with the economic arrangement of the owners of the pass-thru entity. Under the proposed regulations, each owner computes its section 199 deduction by taking into account its distributive or proportionate share of the pass-thru entity's items (including items of income and gain, as well as items of loss and deduction not otherwise disallowed by the Code), CGS allocated to such items of income, and gross receipts included in such items of income. In response to a commentator's inquiry, the proposed regulations make it clear that the owner of a pass-thru entity need not be engaged directly in the entity's trade or business in order to claim a section 199 deduction on the basis of that owner's share of the pass-thru entity's items.

Some commentators recommended that section 199 be applied to partnerships by using an aggregate approach in situations where the qualified production activities are conducted by the partnership, which distributes or sells the QPP, qualified films, or utilities to a partner who then leases, rents, licenses, sells, exchanges, or otherwise disposes of the property, or where the qualified production activities are conducted by a partner which contributes or sells the QPP, qualified films, or utilities to the partnership, which then leases, rents, licenses, sells, exchanges, or otherwise disposes of the property. The commentators maintained that the income derived by the partners and the partnerships from the lease, rental, license, sale, exchange, or other disposition of the property in these situations should be treated as QPAI and qualify for the section 199 deduction. The proposed regulations do not follow the commentators' recommendation because section 199(c)(4)(A) requires that the gross receipts must be derived from the taxpayer's own qualified production activities to qualify as DPGR. Accordingly, except for; (i) certain qualifying oil and gas partnerships; and (ii) EAG partnerships, discussed below, the proposed regulations provide that the owner of a pass-thru entity is not treated as directly conducting the qualified production activities of the pass-thru entity, and vice versa, with respect to the property transferred between the pass-thru entity and the owner. This rule applies to all partnerships, including partnerships that have elected out of subchapter K under section 761(a). In addition, attribution of activities does not apply for purposes of the construction of real property and the performance of engineering and architectural services.

The proposed regulations, pursuant to the Congressional Letter, provide a limited exception for certain partnerships in which all of the capital and profits interests are owned by members of a single EAG at all times during the taxable year of the partnership (EAG partnership). For purposes of determining the DPGR of a partnership and its partners, an EAG partnership and all members of the EAG in which the partners of the EAG partnership are members are treated as a single taxpayer during the taxable year for purposes of section 199(c)(4). Thus, if an EAG partnership MPGE or produces property and distributes, leases, rents, licenses, sells, exchanges, or otherwise disposes of that property to a member of an EAG in which the partners of the EAG partnership are members, then the MPGE or production activity conducted by the EAG partnership will be treated as having been conducted by the members of the EAG. Similarly, if one or more members of an EAG in which the partners of an EAG partnership are members MPGE or produces property, and contributes, leases, rents, licenses, sells, exchanges, or otherwise disposes of that property to the EAG partnership, then the MPGE or production activity conducted by the EAG member (or members) will be treated as having been conducted by the EAG partnership.

Except as otherwise provided, an EAG partnership is generally treated the same as other partnerships for purposes of section 199. Accordingly, the proposed regulations provide that an EAG partnership is subject to the rules of § 1.199–5 regarding the application of section 199 to pass-thru entities, and the application of the section 199(d)(1)(B)

wage limitation under § 1.199–5(a)(3). Under the proposed regulations, if an EAG partnership distributes property to a partner, then, solely for purposes of section 199(d)(1)(B)(ii), the EAG partnership is treated as having gross receipts in the taxable year of the distribution equal to the fair market value of the property at the time of distribution to the partner and the deemed gross receipts are allocated to that partner, provided the partner derives gross receipts from the distributed property during the taxable year of the partner with or within which the partnership's taxable year (in which the distribution occurs) ends. Costs included in the adjusted basis of the distributed property and any other relevant deductions are taken into account in computing the partner's QPAI. The proposed regulations provide that the small business simplified overall method is not available to EAG partnerships.

Another commentator asked whether the owner of a pass-thru entity might have to perform multiple QPAI calculations, distinguishing between pass-thru and non-pass-thru production activities. The proposed regulations make it clear that, when determining its section 199 deduction, an owner of a pass-thru entity aggregates items of income and expense from the entity (including W–2 wages) with its own items of income and expense (including W–2 wages) for purposes of allocating and apportioning deductions to DPGR. As noted above, the amount of W–2 wages of a pass-thru entity taken into account by an owner in applying the wage limitation of section 199(b) is determined under section 199(d)(1)(B). The proposed regulations provide that in determining an owner's allocable share of wages under section 199(d)(1)(B)(i), W–2 wages are deemed to be allocated in the same way as wage expense is allocated. In the case of a non-grantor trust or estate, the W–2 wages are deemed to be allocated among the trust or estate and the various beneficiaries in the same manner as QPAI, as described below. Although a pass-thru entity's QPAI is computed by deducting wages paid by the entity during its entire taxable year, generally it is the pass-thru entity's W–2 wages (as shown on the Forms W–2 for the calendar year ending within that taxable year) that are used to compute the wage limitation under section 199(b) and an owner's allocable share of wages under section 199(d)(1)(B)(i). If QPAI, computed by taking into account only the items of the pass-thru entity allocated to the owner, is not greater than zero, the owner may not take into account the W–2 wages of the entity in computing the section 199(b) wage limitation.

A commentator requested that the proposed regulations clarify and illustrate by example how the section 199(d)(1)(B) wage limitation applies in a tiered partnership structure. In particular, the commentator suggested that the W–2 wages of a lower-tier partnership with positive QPAI are properly allocable to the partner of the upper-tier partnership even if the QPAI allocated to the partner from the upper-tier partnership is less than zero. The proposed regulations do not adopt this suggestion. The proposed regulations provide that the section 199(d)(1)(B) wage limitation must be applied at each level in a tiered structure. Thus, in a tiered structure, the owner of a pass-thru entity (including an owner that itself is a pass-thru entity) calculates the amounts described in section 199(d)(1)(B)(i) (allocable share) and (d)(1)(B)(ii) (twice the applicable percentage of the QPAI from the entity) separately with regard to its interest in that pass-thru entity. The proposed regulations provide rules regarding the treatment of W–2 wages when a pass-thru entity (upper-tier entity) owns an interest in one or more other pass-thru entities (lower-tier entities). An example in the proposed regulations illustrates the application of these rules.

The proposed regulations contain special rules for trusts and estates. To the extent that a grantor or another person is treated as owning all or part of a trust under sections 671 through 679 (grantor trust), the owner will compute its QPAI with respect to the owned portion of the trust as if that QPAI had been generated by activities performed directly by the owner. In the case of a non-grantor trust or estate, the DPGR and expenses needed to compute the QPAI, as well as the W–2 wages relevant to the computation of the wage limitation, must be allocated among the trust or estate and its various beneficiaries. Each beneficiary's share of the trust's or estate's QPAI (which will be less than zero if the CGS and the deductions allocated and apportioned to DPGR exceed the trust's or estate's DPGR) and W–2 wages will be determined based on the proportion of the trust's or estate's distributable net income (DNI), as defined by section 643(a), that is deemed to be distributed to that beneficiary for that taxable year. Similarly, the proportion of the entity's DNI that is not deemed distributed by the trust or estate will determine the entity's share of the QPAI and W–2 wages. In addition, if the trust or estate has no DNI in a particular taxable year, any QPAI and W–2 wages are allocated to the trust or estate, and not to any beneficiary.

Section 199(d)(1)(A)(i) provides that, in the case of an estate or trust (or other pass-thru entity), section 199 shall apply at the beneficiary (or similar) level. Pursuant to this provision, as clarified by the Congressional Letter, the proposed regulations provide that a trust or estate may claim the section 199 deduction to the extent that QPAI is allocated to it.

Solely for purposes of determining the section 199 deduction for the taxable year, the QPAI of a trust or estate must be computed by allocating the expenses described in section 199(d)(5) under § 1.652(b)–3 with respect to directly attributable expenses. With respect to other expenses described in section 199(d)(5), a trust or estate that qualifies for the simplified deduction method described in § 1.199–4(e) must use that method, and any other trust or estate must use the section 861 method described in § 1.199–4(d). The small business simplified overall method is not available to a trust or estate.

Because the sale of an interest in a pass-thru entity does not reflect the realization of DPGR by that entity, DPGR generally does not include gain or loss recognized on the sale, exchange or other disposition of an interest in the entity. However, consistent with Notice 2005–14, if section 751(a) or (b) applies, then gain or loss attributable to partnership assets giving rise to ordinary income under section 751(a) or (b), the sale, exchange, or other disposition of which would give rise to an item of DPGR, is taken into account in computing the partner's section 199 deduction.

Section 199 applies to taxable years beginning after December 31, 2004. Accordingly, these proposed regulations apply to taxable years of pass-thru entities that begin on or after January 1, 2005. The IRS and Treasury Department recognize that a pass-thru entity will need to provide certain information to its owners to allow those persons to compute the section 199 deduction. No special provision with regard to information reporting is made for electing large partnerships (ELPs) as defined by section 775, which are subject to the same methods for allocating and apportioning deductions as are other partnerships. Thus, ELPs are required to provide the same information to their partners as other partnerships for purposes of computing the section 199 deduction. The IRS and the Treasury Department intend to provide information reporting rules for

pass-thru entities in the relevant forms and instructions.

Agricultural and Horticultural Cooperatives

A commentator suggested that the proposed regulations provide that patrons cannot include patronage dividends and per-unit retain certificates in the computation of the QPAI from the patron's other farming operations to the extent that those amounts were taken into account by a cooperative in determining the cooperative's section 199 deduction. The commentator stated that in many cases, both the cooperative and its patrons will be engaged in qualifying activities. For example, gross receipts from crops raised by a farmer in the United States may be eligible for the section 199 deduction as well as the receipts the cooperative derives from the marketing of the crop. To avoid duplication of section 199 benefits, the proposed regulations clarify that under § 1.199–6(h) patronage dividends and per-unit allocations a patron receives from a cooperative that are taken into account as part of the cooperative's computation of QPAI may not be taken into account in computing the patron's QPAI from its own qualifying activities. In addition, patronage dividends and per-unit retain allocations include any advances on patronage or per-unit retains paid in money made during the taxable year. Examples are provided to illustrate this rule.

A commentator suggested that the proposed regulations clarify the amount of the section 199 deduction a cooperative is required to pass through to its patrons. Accordingly, the proposed regulations clarify in § 1.199–6(d) that the cooperative may, at its discretion, pass through all, some, or none of the allowable section 199 deduction to its patrons.

A commentator suggested that it would be useful if the proposed regulations address whether a cooperative member of a federated cooperative may pass through to its patrons the section 199 deduction it receives as a patron cooperative. Accordingly, the proposed regulations in § 1.199–6(d) provide that a cooperative patron of a federated cooperative may pass through the section 199 deduction it receives to its member patrons.

A commentator requested that the proposed regulations address the form, content, and timing of the patron notification requirements. The commentator stated that the notice should not have to accompany the patronage distribution. For instance, a cooperative should be permitted to send out a notice passing through an estimated amount of the section 199 deduction at the time patronage dividends are paid and a second notice (when the Federal income tax return is completed and the section 199 deduction is actually determined) covering anything that was not passed through by the first notice, provided the notice is sent during the payment period in section 1382(d). The proposed regulations provide in § 1.199–6(b) that, in order for a patron to qualify for the section 199 deduction, the cooperative must designate the patron's portion of the section 199 deduction in a written notice mailed by the cooperative to its patrons no later than the 15th day of the ninth month following the close of the cooperative's taxable year. The cooperative may use the same written notice, if any, that it uses to notify patrons of their respective allocations of patronage dividends, or may use a separate timely written notice(s) to comply with this section. The cooperative must report the amount of the patron's section 199 deduction on Form 1099-PATR, ''Taxable Distributions Received From Cooperative,'' issued to the patron.

A commentator suggested that the proposed regulations clarify that patrons (whether they use the cash or accrual method of accounting) are entitled to claim the section 199 deduction passed through from the cooperative on the return for the taxable year in which they receive written notification from the cooperative. The proposed regulations provide in § 1.199–6(d) that patrons may claim the section 199 deduction for the taxable year they receive the written notice informing them of the section 199 deduction amount.

A commentator suggested that the proposed regulations clarify that the section 199 deduction of a cooperative is subject to the W–2 wage limitation under section 199(b) at the cooperative level and that it is not subject to a second W–2 wage limitation at the patron level to the extent the section 199 deduction is passed through to its patrons. The proposed regulations provide in § 1.199–6(e) that the W–2 wage limitation shall be applied only at the cooperative level whether or not the cooperative chooses to pass through some or all of the section 199 deduction. In addition, the proposed regulations in § 1.199–6(d) provide that patrons may claim the section 199 deduction without regard to the taxable income limitation.

A commentator suggested that the proposed regulations address what happens when an audit determination results in a decrease in the amount of a cooperative's section 199 deduction passed through to its patrons. The proposed regulations provide in § 1.199–6(f) that, if an audit determines or an amended return reports that the amount of the section 199 deduction that was passed through to patrons exceeded the amount determined to be allowable by the audit or on the amended return, recapture of the audit adjustment amount or excess amended return amount will occur at the cooperative level.

Expanded Affiliated Groups

Section 199(d)(4)(A) provides that all members of an EAG are treated as a single corporation for purposes of section 199.

The single corporation language in section 199(d)(4)(A) has created confusion among commentators and the proposed regulations clarify the meaning of this language. The proposed regulations provide that except as otherwise provided in the Code and regulations (see, for example, sections 199(c)(7) and 267, §§ 1.199–3(b) and 1.199–7(a)(3), and the consolidated return regulations), each member of an EAG is a separate taxpayer that computes its own taxable income or loss, QPAI, and W–2 wages, which are then aggregated at the EAG level. For example, if corporations X and Y are members of the same EAG, but are not members of the same consolidated group, and X sells QPP it MPGE within the United States to Y, the transaction is taken into account in determining the EAG's section 199 deduction. If X and Y are members of the same consolidated group, see the section entitled Consolidated Groups, below.

The IRS and Treasury Department believe that Congress intended that an EAG should be eligible for the section 199 deduction if the activities to produce QPP, qualified films, and utilities are done by one or more members of the EAG other than the member who leases, rents, licenses, sells, exchanges, or otherwise disposes of the QPP, qualified films, and utilities. Accordingly, the proposed regulations provide generally that if a member of an EAG (the disposing member) derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of QPP, qualified films, and utilities MPGE or otherwise produced by another member or members of the same EAG, the disposing member is treated as conducting the activities conducted by each other member of the EAG with respect to the QPP, qualified films, and utilities in determining whether its gross receipts are DPGR. However, in general, attribution of

activities does not apply for purposes of the construction of real property under § 1.199–3(l)(1) or the performance of engineering and architectural services under § 1.199–3(m)(1). A member of an EAG must engage in a construction activity under § 1.199–3(l)(2), provide engineering services under § 1.199–3(m)(2), or provide architectural services under § 1.199–3(m)(3) in order for the member's gross receipts to be derived from construction, engineering, or architectural services. Notwithstanding the above, attribution of activities in the construction of real property and the performance of engineering and architectural services does apply for members of the same consolidated group. For example, if X and Y are members of the same EAG, but are not members of the same consolidated group, and X constructs a commercial building and sells the building to Y, and Y, who performs no construction activities with respect to the building, sells the building to an unrelated person, Y is not attributed the construction activities of X and Y's receipts from the sale of the building will not be DPGR. However, if X and Y are members of the same consolidated group, Y is attributed the construction activities of X and, assuming all the requirements of section 199(c) are met, Y's receipts will be DPGR.

Some commentators suggested that the proposed regulations provide a special rule excluding finance companies from an EAG. Section 199(d)(4)(A) specifically states that all members of an EAG shall be treated as a single corporation. Neither the statute nor the legislative history provide any exceptions that would allow taxpayers to exclude certain types of companies, including finance companies, from the EAG. Accordingly, the commentators' suggestion has not been adopted.

Notwithstanding that a transaction between members of the same EAG (an intragroup transaction) generally is taken into account in determining the section 199 deduction, the IRS and Treasury Department recognize that taxpayers may engage in an intragroup transaction in an attempt to obtain a section 199 deduction when none should be available. Accordingly, the proposed regulations retain the anti-avoidance rule contained in Notice 2005–14. Thus, if a transaction between members of the same EAG is engaged in or structured with a principal purpose of qualifying for, or increasing the amount of, the section 199 deduction of the EAG or the portion of the section 199 deduction allocated to one or more members of the EAG, adjustments must be made to eliminate the effect of the transaction on the computation of the section 199 deduction.

Some commentators asked whether the $25,000,000 and $5,000,000 average annual gross receipts thresholds for using the simplified deduction method and the small business simplified overall method, respectively, are applied at the EAG level, the consolidated group level, or at the member level. If the EAG was a single corporation, the $25,000,000 and $5,000,000 average annual gross receipts thresholds would take into account the activities of all the members of the EAG. Accordingly, the $25,000,000 and $5,000,000 average annual gross receipts thresholds are applied at the EAG level. Similarly, the new $10,000,000 total assets threshold for using the simplified deduction method and the new $5,000,000 current year CGS and deductions threshold for using the small business simplified overall method also are applied at the EAG level. The determination of whether a taxpayer is engaged in the trade or business of farming that is not required to use the accrual method of accounting under section 447 is determined by taking into account the activities of all the members of the EAG. Similarly, the determination of whether a taxpayer is eligible to use the cash method as provided in Rev. Proc. 2002–28, and is thus eligible to use the small business simplified overall method, is determined by taking into account the activities of all the members of the EAG.

Commentators requested that the rule in Notice 2005–14 that requires all members of the same EAG to use the same cost allocation method be changed to allow members to use different cost allocation methods. In response to the comments received, the IRS and Treasury Department agree that if an EAG is eligible to use the simplified deduction method, each member of the EAG may individually determine whether it wants to use the section 861 method or the simplified deduction method, notwithstanding that another member of the EAG uses a different method. Similarly, if the EAG is eligible to use the small business simplified overall method, each member of the EAG may individually determine whether it wants to use the section 861 method, the simplified deduction method, or the small business simplified overall method, notwithstanding that another member of the EAG uses a different method. However, if the EAG is not eligible to use either the simplified deduction method or the small business simplified overall method, then all members of the EAG must use the section 861 method. Notwithstanding that the members of an EAG generally are not required to use the same cost allocation method, each member of a consolidated group must use the same cost allocation method. Examples are provided to illustrate these provisions.

A commentator also asked at what level the *de minimis* rule described in § 1.199–1(d)(2) is tested. Section 1.199–1(d)(2) treats all of a taxpayer's gross receipts as DPGR if less than 5 percent of the taxpayer's total gross receipts are non-DPGR. The *de minimis* rule is intended to eliminate the burden to a taxpayer of allocating gross receipts between DPGR and non-DPGR when less than 5 percent of its total gross receipts are non-DPGR. When considering the purpose of the *de minimis* rule, the IRS and Treasury Department believe that it is appropriate that the 5 percent threshold be determined at the corporation level, rather than at the EAG or consolidated group level.

Consolidated Groups

The section 199 deduction of a consolidated group (or the section 199 deduction allocated to a consolidated group that is a member of an EAG) is allocated to the members of the consolidated group in proportion to each consolidated group member's QPAI, regardless of whether the consolidated group member has separate taxable income or loss or W–2 wages for the taxable year. Further, if two or more members of a consolidated group engage in an intercompany transaction, as defined in § 1.1502–13(b)(1), the proposed regulations clarify that if an item of income, gain, deduction, or loss is not yet taken into account under § 1.1502–13, the intercompany transaction that gave rise to the item is not taken into account in computing the section 199 deduction until the time and in the same proportion that the item is taken into account under § 1.1502–13. For example, if corporations X and Y file a consolidated Federal income tax return and X sells QPP it MPGE within the United States to Y, the transaction is not taken into account until the time (and in the same proportion) provided in the matching rule of § 1.1502–13(c) or the acceleration rule of § 1.1502–13(d). The proposed regulations provide examples to illustrate these principles.

Some commentators suggested that if X's receipts from an intercompany transaction with consolidated group member Y are non-DPGR (for example, X licenses non-QPP to Y) and Y's CGS and other deductions from the intercompany transaction are taken into

account in determining the consolidated group's QPAI, the consolidated group's QPAI could be different than if X and Y were divisions of a single corporation, contrary to the general intent of § 1.1502–13. The consolidated return regulations already prevent this result. Under § 1.1502–13(c)(1)(i) and (c)(4), X's, Y's, or both X's and Y's separate entity attributes must be redetermined to the extent necessary to treat X and Y as if they were divisions of a single corporation. Thus, X's income may be redetermined to be DPGR (notwithstanding section 199(c)(7) or that the item licensed by X in the intercompany transaction does not otherwise meet the requirements of section 199(c)) or Y's CGS and other deductions from the intercompany transaction may be redetermined to be not allocable to DPGR, whichever produces the effect as though X and Y were divisions of a single corporation. Similarly, if X MPGE QPP within the United States and sells the QPP to Y, but Y does not use the QPP in creating DPGR, in order to produce the effect as though X and Y were divisions of a single corporation, X's gross receipts from the sale of the QPP may be redetermined to be non-DPGR or Y's CGS and other deductions may be redetermined to be allocable to DPGR. In addition, if X MPGE QPP within the United States and sells the QPP to Y, and Y sells the QPP to an unrelated person, X's gross receipts may be redetermined to be non-DPGR (and non-receipts) and Y's CGS and other deductions may be redetermined to be not allocable to DPGR, to the extent necessary to produce the effect as though X and Y were divisions of a single corporation. The proposed regulations provide examples to illustrate the situations described above.

Some commentators asked whether the section 199 deduction results in a downward basis adjustment under § 1.1502–32 if the deduction is allocated to a subsidiary member (S) of a consolidated group. Section 1.1502–32(b)(3)(ii)(B) already addresses this situation. Although the section 199 deduction is taken into account under the general operating rules of § 1.1502–32(b)(3)(i), paragraph (b)(3)(ii)(B) of that section provides that not only is S's income taken into account under the general operating rules of § 1.1502–32(b)(3)(i), but an amount of S's income equivalent to the section 199 deduction is also treated as being tax-exempt income under § 1.1502–32(b)(3)(ii)(A). The net result is that the basis that P (S's parent) has in its S stock is not reduced on account of the section 199 deduction. For example, if S earns $100 and is entitled to a $9 section 199 deduction, P's basis in S increases by $100 because the $100 income and the $9 deduction are taken into account under § 1.1502–32(b)(3)(i) (resulting in $91 of the increase) and $9 of the income also is taken into account under § 1.1502–32(b)(3)(ii)(A) as tax-exempt income (resulting in $9 of the increase).

The proposed regulations treat a consolidated group as a single member of the EAG. For example, if A, B, C, S1, and S2 are members of the same EAG, and A, S1, and S2 are members of the same consolidated group (the A consolidated group), then the A consolidated group is treated as one member of the EAG. Thus, the EAG is considered to have three members, the A consolidated group, B, and C.

Alternative Minimum Tax

Section 199(d)(6), as clarified by the Congressional Letter, provides that for purposes of determining AMTI under section 55, the section 199 deduction must be computed in the same manner as for regular tax, except that in the case of a corporation, the taxable income limitation is the corporation's AMTI. Accordingly, the proposed regulations provide that for purposes of determining AMTI under section 55, a taxpayer that is not a corporation may deduct an amount equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of the taxpayer's QPAI for the taxable year, or the taxpayer's taxable income for the taxable year, determined without regard to the section 199 deduction (or in the case of an individual, AGI). In the case of a corporation (including a corporation subject to tax under section 511(a)), a taxpayer may deduct an amount equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of the taxpayer's QPAI for the taxable year, or the taxpayer's AMTI (as defined in section 55(b)(2)) for the taxable year, determined without regard to the section 199 deduction. For purposes of computing AMTI, QPAI is determined without regard to any adjustments under sections 56 through 59. In the case of an individual or a trust, AGI and taxable income are also determined without regard to any adjustments under sections 56 through 59. The amount of the deduction allowable for purposes of computing AMTI for any taxable year cannot exceed 50 percent of the W–2 wages of the employer for the taxable year (as determined under § 1.199–2).

Revocation of Election Under Section 631(a)

Section 102(c) of the Act allows a taxpayer to revoke an election under section 631(a) to treat the cutting of timber as a sale or exchange. Any section 631(a) election for a taxable year ending on or before October 22, 2004, may be revoked under section 102(c) of the Act for any taxable year ending after that date. In addition, any election under section 631(a) for a taxable year ending on or before October 22, 2004 (and any revocation of the election under section 102(c) of the Act), is disregarded for purposes of determining whether the taxpayer is eligible to make a subsequent election under section 631(a). A revocation under section 102(c) of the Act will remain in effect until the first taxable year for which the taxpayer makes a new election under section 631(a).

Commentators suggested that, if a taxpayer makes an election under section 631(a), section 199 should apply to any resulting section 1231 gain. A taxpayer that makes an election under section 631(a) reports the difference between the fair market value of the timber cut and its actual cost as section 1231 gain. The proposed regulations do not adopt the suggestion because timber is real property, not tangible personal property, and the cutting of timber does not qualify under section 199(c)(4)(A)(i)(I). In the case of a taxpayer who does not make an election under section 631(a), or a taxpayer who revokes an election under section 631(a) pursuant to section 102(c) of the Act, the cutting and sawing of timber produces lumber which qualifies as tangible personal property. The gross receipts derived by a taxpayer from the sale of lumber it produces qualify as DPGR (assuming all the other requirements of section 199(c) are met).

Proposed Effective Date

The regulations are proposed to be applicable to taxable years beginning after December 31, 2004. Section 199 applies to taxable years of pass-thru entities beginning after December 31, 2004. Accordingly, section 199 does not apply to taxable years of pass-thru entities beginning before January 1, 2005. For example, assume a pass-thru entity has a taxable year beginning July 1, 2004, and ending June 30, 2005, and the owners of the pass-thru entity have calendar taxable years. Because section 199 first applies to the pass-thru entity for its taxable year beginning July 1, 2005, the first taxable year in which an

owner of the pass-thru entity will be eligible to claim a section 199 deduction for the owner's allocable or pro rata share of items allocated or apportioned to the qualified production activities of the pass-thru entity will be the calendar year 2006. Conversely, assume that a pass-thru entity has a calendar taxable year beginning January 1, 2005, and has a short taxable year ending on June 30, 2005, due to the termination of the entity. Assume the owners of that pass-thru entity have taxable years beginning July 1, 2004, and ending June 30, 2005. Because section 199 first applies to the owners for their taxable years beginning July 1, 2005, under § 1.199–8(g), the owners of the pass-thru entity will be ineligible to claim a section 199 deduction for the owners' allocable or pro rata share of items allocated or apportioned to the qualified production activities of the pass-thru entity for their taxable years ending June 30, 2005.

Until the date final regulations are published in the **Federal Register**, the proposed regulations provide that taxpayers may rely on the rules set forth in the interim guidance on section 199 as set forth in Notice 2005–14 (Notice) as well as the proposed regulations under §§ 1.199–1 through 1.199–8 (proposed regulations). For this purpose, if the proposed regulations and the Notice include different rules for the same particular issue, then the taxpayer may rely on either the rule set forth in the proposed regulations or the rule set forth in the Notice. For example, the Notice and the proposed regulations both include the small business simplified overall method, however the eligibility requirements for the method under the Notice have been modified in the proposed regulations. Accordingly, a taxpayer may rely on the eligibility requirements for the method set forth in either the Notice or the proposed regulations. However, if the proposed regulations include a rule that was not included in the Notice, taxpayers are not permitted to rely on the absence of a rule to apply a rule contrary to the proposed regulations. For example, Notice 2005–14 does not include any rules regarding the treatment of hedging transactions whereas the proposed regulations include such rules. Accordingly, taxpayers are not permitted to treat hedging transactions contrary to the treatment provided in the proposed regulations.

Request for Comments

The IRS and Treasury Department invite taxpayers to submit comments on issues relating to section 199. The IRS and Treasury Department intend to finalize the proposed regulations as soon as possible so taxpayers will have the final regulations as they begin to prepare their 2005 Federal income tax returns. Accordingly, the IRS and Treasury Department encourage taxpayers to submit their comments by January 3, 2006 so they can be given proper consideration. In particular, the IRS and Treasury Department encourage taxpayers to submit comments on the following issues:

1. Questions have arisen as to the applicability under section 199 of a Large and Mid-Size Business (LMSB) directive dated March 14, 2002, ''Field Directive on the Use of Estimates from Probability Samples,'' that authorizes in appropriate circumstances the use of statistical sampling by taxpayers. LMSB taxpayers are not precluded from applying the concepts of the LMSB directive for purposes of section 199. The proposed regulations do not provide specific rules on the use of statistical sampling for 199 purposes, however comments are requested on how taxpayers can apply statistical sampling to section 199, what specific areas of section 199 statistical sampling could be applied to, and whether application of statistical sampling should be limited to specific areas of section 199.

2. Taxpayers are eligible to make certain elections under the section 861 regulations. For example, § 1.861–9T(g)(1)(ii) permits a taxpayer to elect to determine the value of its assets on the basis of either their tax book value or fair market value. Some of the elections under the section 861 regulations require the consent of the Commissioner to revoke or to change to another method. See §§ 1.861–8T(c)(2), 1.861–9T(i)(2), and 1.861–17(e). Because the section 861 method requires certain taxpayers to use the rules of the section 861 regulations in a new context, these taxpayers may want to reconsider previously made elections under those regulations. The IRS and Treasury Department intend to issue a revenue procedure granting taxpayers automatic consent to change certain elections under the section 861 regulations. Comments are requested concerning such an automatic consent procedure, including which elections should be included and the appropriate time period during which the automatic consent should apply.

3. The IRS and Treasury Department note that there are special rules regarding the application of the section 861 method in the case of affiliated groups. See section 864(e)(5) and (6); see also §§ 1.861–11(d)(7), 1.861–11T(d)(6), 1.861–14(d) and 1.861–14T. Comments are requested regarding whether additional guidance is needed to clarify how the rules under §§ 1.861–11T(c) and (g) and 1.861–14T(c) apply under the section 861 method to allocate and apportion interest and other expenses such as research and experimentation expenses in computing QPAI of the members of such affiliated groups in which otherwise includible corporations are owned indirectly through foreign corporations and partnerships.

4. Comments are requested concerning whether gross receipts derived from the provision of certain types of online software should qualify under section 199 as being derived from a lease, rental, license, sale, exchange, or other disposition of the software and, if so, how to distinguish between such types of online software.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that, as previously discussed, any burden on cooperatives is minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, January 11, 2006, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Due to building security procedures, visitors

must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by December 21, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Paul Handleman and Lauren Ross Taylor, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

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

Section 1.199–1 also issued under 26 U.S.C. 199(d).

Section 1.199–2 also issued under 26 U.S.C. 199(d).

Section 1.199–3 also issued under 26 U.S.C. 199(d).

Section 1.199–4 also issued under 26 U.S.C. 199(d).

Section 1.199–5 also issued under 26 U.S.C. 199(d).

Section 1.199–6 also issued under 26 U.S.C. 199(d).

Section 1.199–7 also issued under 26 U.S.C. 199(d).

Section 1.199–8 also issued under 26 U.S.C. 199(d). * * *

Par. 2. Sections 1.199–0 through 1.199–8 are added to read as follows:

§ 1.199–0 Table of contents.

This section lists the headings that appear in §§ 1.199–1 through 1.199–8.

§ 1.199–1 Income attributable to domestic production activities.

(a) In general.
(b) Taxable income and adjusted gross income.
(1) In general.
(2) Examples.
(c) Qualified production activities income.
(1) In general.
(2) Definition of item.
(i) In general.
(ii) Examples.
(d) Allocation of gross receipts.
(1) In general.
(2) De minimis rule.
(3) Examples.
(e) Timing rules for determining QPAI.
(1) Gross receipts and costs recognized in different taxable years.
(2) Percentage of completion method.
(3) Example.

§ 1.199–2 Wage limitation.

(a) Rules of application.
(1) In general.
(2) Wages paid by entity other than common law employer.
(b) No application in determining whether amounts are wages for employment tax purposes.
(c) Application in case of taxpayer with short taxable year.
(d) Acquisition or disposition of a trade or business (or major portion).
(e) Non-duplication rule.
(f) Definition of W–2 wages.
(1) In general.
(2) Methods for calculating W–2 wages.
(i) Unmodified box method.
(ii) Modified Box 1 method.
(iii) Tracking wages method.

§ 1.199–3 Domestic production gross receipts.

(a) In general.
(b) Related persons.
(1) In general.
(2) Exceptions.
(c) Definition of gross receipts.
(d) Definition of manufactured, produced, grown, or extracted.
(1) In general.
(2) Packaging, repackaging, labeling, or minor assembly.
(3) Installing.
(4) Consistency with section 263A.
(5) Examples.
(e) Definition of by the taxpayer.
(1) In general.
(2) Special rule for certain government contracts.
(3) Examples.
(f) Definition of in whole or in significant part.
(1) In general.
(2) Substantial in nature.
(3) Safe harbor.
(4) Examples.
(g) Definition of United States.
(h) Definition of derived from the lease, rental, license, sale, exchange, or other disposition.
(1) In general.
(2) Examples.
(3) Hedging transactions.
(i) In general.
(ii) Currency fluctuations.
(iii) Other rules.
(4) Allocation of gross receipts—embedded services and non-qualified property.
(i) In general.
(ii) Exceptions.
(iii) Examples.
(5) Advertising income.
(i) Tangible personal property.
(ii) Qualified films.
(iii) Examples.
(6) Computer software.
(i) In general.
(ii) Examples.
(7) Exception for certain oil and gas partnerships.
(i) In general.
(ii) Example.
(8) Partnerships owned by members of a single expanded affiliated group.
(i) In general.
(ii) Special rules for distributions from EAG partnerships.
(iii) Examples.
(9) Non-operating mineral interests.
(i) Definition of qualifying production property.
(1) In general.
(2) Tangible personal property.
(i) In general.
(ii) Local law.
(iii) Machinery.
(iv) Intangible property.
(3) Computer software.
(i) In general.
(ii) Incidental and ancillary rights.
(iii) Exceptions.
(4) Sound recordings.
(i) In general.
(ii) Exception.
(5) Tangible personal property with computer software or sound recordings.
(i) Computer software and sound recordings.
(ii) Tangible personal property.
(j) Definition of qualified film.
(1) In general.
(2) Tangible personal property with a film.
(i) Film licensed by a taxpayer.
(ii) Film produced by a taxpayer.
(A) Qualified films.
(B) Nonqualified films.
(3) Derived from a qualified film.
(4) Examples.
(5) Compensation for services.
(6) Determination of 50 percent.
(7) Exception.
(k) Electricity, natural gas, or potable water.
(1) In general.
(2) Natural gas.
(3) Potable water.
(4) Exceptions.
(i) Electricity.
(ii) Natural gas.
(iii) Potable water.
(iv) De minimis exception.
(5) Example.

(l) Definition of construction performed in the United States.
(1) Construction of real property.
(i) In general.
(ii) De minimis exception.
(2) Activities constituting construction.
(3) Definition of infrastructure.
(4) Definition of substantial renovation.
(5) Derived from construction.
(i) In general.
(ii) Land safe harbor.
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(m) Definition of engineering and architectural services.
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(2) Engineering services.
(3) Architectural services.
(4) De minimis exception for performance of services in the United States.
(n) Exception for sales of certain food and beverages.
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(2) Examples.

§ 1.199–4 Costs allocable to domestic production gross receipts.

(a) In general.
(b) Cost of goods sold allocable to domestic production gross receipts.
(1) In general.
(2) Allocating cost of goods sold.
(3) Special rules for imported items or services.
(4) Rules for inventories valued at market or bona fide selling prices.
(5) Rules applicable to inventories accounted for under the last-in, first-out (LIFO) inventory method.
(i) In general.
(ii) LIFO/FIFO ratio method.
(iii) Change in relative base-year cost method.
(6) Taxpayers using the simplified production method or simplified resale method for additional section 263A costs.
(7) Examples.
(c) Other deductions allocable or apportioned to domestic production gross receipts or gross income attributable to domestic production gross receipts.
(1) In general.
(2) Treatment of certain deductions.
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(ii) Net operating losses.
(iii) Deductions not attributable to the conduct of a trade or business.
(d) Section 861 method.
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(2) Deductions for charitable contributions.
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(5) Examples.
(e) Simplified deduction method.
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(2) Members of an expanded affiliated group.
(i) In general.
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(i) In general.
(ii) Exception.
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(4) Ineligible pass-thru entities.
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(1) In general.
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§ 1.199–5 Application of section 199 to pass-thru entities.

(a) Partnerships.
(1) Determination at partner level.
(2) Disallowed deductions.
(3) Partner's share of W–2 wages.
(4) Examples.
(b) S corporations.
(1) Determination at shareholder level.
(2) Disallowed deductions.
(3) Shareholder's share of W–2 wages.
(c) Grantor trusts.
(d) Non-grantor trusts and estates.
(1) Computation of section 199 deduction.
(2) Example.
(e) Gain or loss from the disposition of an interest in a pass-thru entity.
(f) Section 199(d)(1)(B) wage limitation and tiered structures.
(1) In general.
(2) Share of W–2 wages.
(3) Example.
(g) No attribution of qualified activities.

§ 1.199–6 Agricultural and horticultural cooperatives.

(a) In general.
(b) Written notice to patrons.
(c) Determining cooperative's qualified production activities income.
(d) Additional rules relating to pass-through of section 199 deduction.
(e) W–2 wages.
(f) Recapture of section 199 deduction.
(g) Section is exclusive.
(h) No double counting.
(i) Examples.

§ 1.199–7 Expanded affiliated groups.

(a) In general.
(1) Definition of expanded affiliated group.
(2) Identification of members of an expanded affiliated group.
(i) In general.
(ii) Becoming or ceasing to be a member of an expanded affiliated group.
(3) Attribution of activities.
(4) Examples.
(5) Anti-avoidance rule.
(b) Computation of expanded affiliated group's section 199 deduction.
(1) In general.
(2) Net operating loss carryovers.
(c) Allocation of an expanded affiliated group's section 199 deduction among members of the expanded affiliated group.
(1) In general.
(2) Use of section 199 deduction to create or increase a net operating loss.
(d) Special rules for members of the same consolidated group.
(1) Intercompany transactions.
(2) Attribution of activities in the construction of real property and the performance of engineering and architectural services.
(3) Application of the simplified deduction method and the small business simplified overall method.
(4) Determining the section 199 deduction.
(i) Expanded affiliated group consists of consolidated group and non-consolidated group members.
(ii) Expanded affiliated group consists only of members of a single consolidated group.
(5) Allocation of the section 199 deduction of a consolidated group among its members.
(e) Examples.
(f) Allocation of income and loss by a corporation that is a member of the expanded affiliated group for only a portion of the year.
(1) In general.
(i) Pro rata allocation method.
(ii) Section 199 closing of the books method.
(iii) Making the section 199 closing of the books election.
(2) Coordination with rules relating to the allocation of income under § 1.1502–76(b).
(g) Total section 199 deduction for a corporation that is a member of an expanded affiliated group for some or all of its taxable year.
(1) Member of the same expanded affiliated group for the entire taxable year.
(2) Member of the expanded affiliated group for a portion of the taxable year.
(3) Example.
(h) Computation of section 199 deduction for members of an expanded affiliated group with different taxable years.
(1) In general.
(2) Example.

§ 1.199–8 Other rules.

(a) Individuals.
(b) Trade or business requirement.
(c) Coordination with alternative minimum tax.
(d) Nonrecognition transactions.
(1) In general.
(2) Section 1031 exchanges.
(3) Section 381 transactions.
(e) Taxpayers with a 52–53 week taxable year.
(f) Section 481(a) adjustments.
(g) Effective date.

§ 1.199–1 Income attributable to domestic production activities.

(a) *In general.* A taxpayer may deduct an amount equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of the taxpayer's qualified production activities income (QPAI) (as defined in paragraph (c) of this section) for the taxable year, or the taxpayer's taxable income for the taxable year (or, in the case of an individual, adjusted gross income). The amount of the deduction allowable under this paragraph (a) for any taxable year cannot exceed 50

percent of the W–2 wages of the employer for the taxable year (as determined under § 1.199–2).

(b) *Taxable income and adjusted gross income*—(1) *In general.* For purposes of paragraph (a) of this section, the definition of taxable income under section 63 applies and taxable income is determined without regard to section 199. In the case of individuals, adjusted gross income for the taxable year is determined after applying sections 86, 135, 137, 219, 221, 222, and 469, and without regard to section 199. For purposes of determining the tax imposed by section 511, paragraph (a) of this section is applied using unrelated business taxable income. For purposes of determining the amount of a net operating loss (NOL) carryback or carryover under section 172(b)(2), taxable income is determined without regard to the deduction allowed under section 199.

(2) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. (i) *Facts.* X, a United States corporation that is not part of an expanded affiliated group (EAG) (as defined in § 1.199–7), engages in production activities that generate QPAI and taxable income (without taking into account the deduction under this section) of $600 in 2010. During 2010, × incurs W–2 wages of $300. × has an NOL carryover to 2010 of $500. X's deduction under this section for 2010 is $9 (.09 × (lesser of QPAI of $600 and taxable income of $100) subject to the wage limitation of $150 (50% × $300)).

Example 2. (i) *Facts.* X, a United States corporation that is not part of an EAG, engages in production activities that generate QPAI and taxable income (without taking into account the deduction under this section and an NOL deduction) of $100 in 2010. X has an NOL carryover to 2010 of $500. X's deduction under this section for 2010 is $0 (.09 × (lesser of QPAI of $100 and taxable income of $0)).

(ii) *Carryover to 2011.* X's taxable income for purposes of determining its NOL carryover to 2011 is $100. Accordingly, X's NOL carryover to 2011 is $400 ($500 NOL carryover to 2010—$100 NOL used in 2010).

(c) *Qualified production activities income*—(1) *In general.* QPAI for any taxable year is an amount equal to the excess (if any) of the taxpayer's domestic production gross receipts (DPGR) over the sum of the cost of goods sold (CGS) that is allocable to such receipts, other deductions, expenses, or losses (collectively, deductions) directly allocable to such receipts, and a ratable portion of deductions that are not directly allocable to such receipts or another class of income. See §§ 1.199–3 and 1.199–4. For purposes of this paragraph (c), QPAI is determined on an item-by-item basis (and not, for example, on a division-by-division, product line-by-product line, or transaction-by-transaction basis) and is the sum of QPAI derived by the taxpayer from each item (as defined in paragraph (c)(2) of this section). For purposes of this determination, QPAI from each item may be positive or negative. DPGR and its related CGS and deductions must be included in the QPAI computation regardless of whether, when viewed in isolation, the DPGR exceeds the CGS and deductions allocated and apportioned thereto. For example, if a taxpayer has $3 of QPAI from the sale of a shirt and derives ($1) of QPAI from the sale of a hat, the taxpayer's QPAI is $2.

(2) *Definition of item*—(i) *In general.* Except as otherwise provided in this paragraph, the term *item* means, for purposes of §§ 1.199–1 through 1.199–8, the property offered for sale to customers that meets all of the requirements under this section and § 1.199–3. If the property offered for sale does not meet these requirements, a taxpayer must treat as the item any portion of the property offered for sale that meets these requirements. However, in no case shall the portion of the property offered for sale that is treated as the item exclude any other portion that meets these requirements. In no event may an item consist of two or more properties offered for sale that are not packaged and sold together as one item. In addition, in the case of property customarily sold by weight or by volume, the item is determined using the custom of the industry (for example, barrels of oil). In the case of construction (as defined in § 1.199–3(l)(1)) or engineering and architectural services (as defined in § 1.199–3(m)(1)), a taxpayer may use any reasonable method, taking into account all of the facts and circumstances, to determine what construction activities and engineering or architectural services constitute an item.

(ii) *Examples.* The following examples illustrate the application of paragraph (c)(2)(i) of this section:

Example 1. X manufactures leather and rubber shoe soles in the United States. X imports shoe uppers, which are the parts of the shoe above the sole. X manufactures shoes for sale by sewing or otherwise attaching the soles to the imported uppers. If the shoes do not meet the requirements under this section and § 1.199–3, then under paragraph (c)(2)(i) of this section, X must treat the sole as the item if the sole meets the requirements under this section and § 1.199–3.

Example 2. The facts are the same as in *Example 1* except that X also buys some finished shoes from unrelated parties and resells them to retail shoe stores. X sells shoes in individual pairs. X ships the shoes in boxes, each box containing 50 pairs of shoes, some of which X manufactured, and some of which X purchased. X cannot treat a box of 50 pairs of shoes as an item, because the box of shoes is not sold at retail.

Example 3. Y manufactures toy cars in the United States. Y also purchases cars that were manufactured by unrelated parties. In addition to packaging some cars individually, Y also packages some cars in sets of three. Some of the cars in the sets may have been manufactured by Y and some may have been purchased. The three-car packages are sold by toy stores at retail. Y must treat each three-car package as the item. However, if the three-car package does not meet the requirements under this section and § 1.199–3, Y must treat a toy car in the three-car package as the item, provided the toy car meets the requirements under this section and § 1.199–3.

Example 4. The facts are the same as *Example 3* except that the toy store follows Y's recommended pricing arrangement for the individual toy cars for sale to customers at three for $10. Frequently, this results in retail customers purchasing three individual cars in one transaction. Y must treat each toy car as an item and cannot treat three individual toy cars as one item, because the individual toy cars are not packaged together for retail sale.

Example 5. Z produces in bulk form in the United States the active ingredient for a pharmaceutical product. Z sells the active ingredient in bulk form to FX, a foreign corporation. This sale qualifies as DPGR assuming all the other requirements of this section and § 1.199–3 are met. FX uses the active ingredient to produce the finished dosage form drug. FX sells the drug in finished dosage to Z, which sells the drug to customers. Under paragraph (c)(2)(i) of this section, if the finished dosage does not meet the requirements under this section and § 1.199–3, Z must treat the active ingredient portion as the item if the ingredient meets the requirements under this section and § 1.199–3.

(d) *Allocation of gross receipts*—(1) *In general.* A taxpayer must determine the portion of its gross receipts that is DPGR and the portion of its gross receipts that is non-DPGR. Applicable Federal income tax principles apply to determine whether a transaction is, in substance, a lease, rental, license, sale, exchange or other disposition, or whether it is a service (or some combination thereof). For example, if a taxpayer leases, rents, licenses, sells, exchanges, or otherwise disposes of qualifying production property (QPP) (as defined in § 1.199–3(i)(1)), the gross receipts of which constitute DPGR, and engages in transactions with respect to similar property, the gross receipts of which do not constitute DPGR, the taxpayer must allocate its gross receipts from all the transactions based on a reasonable method that is satisfactory to the Secretary based on all of the facts

and circumstances and that accurately identifies the gross receipts that constitute DPGR. Factors taken into consideration in determining whether the method is reasonable include whether the taxpayer uses the most accurate information available; the relationship between the gross receipts and the method chosen; the accuracy of the method chosen as compared with other possible methods; whether the method is used by the taxpayer for internal management or other business purposes; whether the method is used for other Federal or state income tax purposes; the time, burden, and cost of using various methods; and whether the taxpayer applies the method consistently from year to year. Thus, if a taxpayer can, without undue burden or expense, specifically identify where an item was manufactured, or if the taxpayer uses a specific identification method for other purposes, then the taxpayer must use that specific identification method to determine DPGR. If a taxpayer does not use a specific identification method for other purposes and cannot, without undue burden or expense, use a specific identification method, then the taxpayer is not required to use a specific identification method to determine DPGR.

(2) *De minimis rule.* All of a taxpayer's gross receipts may be treated as DPGR if less than 5 percent of the taxpayer's total gross receipts are non-DPGR (after application of exceptions provided in § 1.199–3(h)(4), (k)(4)(iv), (l)(1)(ii), (m)(4), and (n)(1) that result in gross receipts being treated as DPGR). If the amount of the taxpayer's gross receipts that do not qualify as DPGR equals or exceeds 5 percent of the taxpayer's total gross receipts, the taxpayer is required to allocate all gross receipts between DPGR and non-DPGR in accordance with paragraph (d)(1) of this section. If a corporation is a member of an EAG or a consolidated group, the determination of whether less than 5 percent of the taxpayer's total gross receipts are non-DPGR is made at the corporation level rather than at the EAG or consolidated group level, as applicable. In the case of an S corporation, partnership, estate or trust, or other pass-thru entity, the determination of whether less than 5 percent of the pass-thru entity's total gross receipts are non-DPGR is made at the pass-thru entity level. In the case of an owner of a pass-thru entity, the determination of whether less than 5 percent of the owner's total gross receipts are non-DPGR is made at the owner level, taking into account all gross receipts earned by the owner from its activities as well as the owner's share of any pass-thru entity's gross receipts.

(3) *Examples.* The following examples illustrate the application of this paragraph (d):

Example 1. X derives its gross receipts from the sale of gasoline refined by X within the United States and the sale of refined gasoline that X acquired (either by purchase or in a taxable exchange for gasoline refined by X in the United States) from an unrelated party. X does not commingle the gasoline. X must allocate its gross receipts between the gross receipts attributable to the gasoline refined by X in the United States (that qualify as DPGR if all the other requirements of § 1.199–3 are met) and X's gross receipts derived from the resale of the acquired gasoline (that do not qualify as DPGR) if 5 percent or more of X's total gross receipts are not from the sale of gasoline refined by X within the United States.

Example 2. X manufactures the same type of QPP at facilities within the United States and outside the United States which are sold separately. X must allocate its gross receipts between the receipts from the QPP manufactured within the United States and receipts from the QPP not manufactured within the United States if 5 percent or more of X's total gross receipts are not from the sale of QPP manufactured by X within the United States.

(e) *Timing rules for determining QPAI*—(1) *Gross receipts and costs recognized in different taxable years.* If a taxpayer recognizes and reports on a Federal income tax return gross receipts that the taxpayer identifies as DPGR, then the taxpayer must treat the CGS and deductions related to such receipts as relating to DPGR, regardless of whether such receipts ultimately qualify as DPGR. Similarly, if a taxpayer pays or incurs and reports on a Federal income tax return CGS or deductions and identifies such CGS or deductions as relating to DPGR, then the taxpayer must treat the gross receipts related to such CGS or deductions as DPGR, regardless of whether such receipts ultimately qualify as DPGR. Similar rules apply if the taxpayer recognizes and reports on a Federal income tax return gross receipts that the taxpayer identifies as non-DPGR, or pays or incurs and reports on a Federal income tax return CGS or deductions that the taxpayer identifies as relating to non-DPGR. The determination of whether gross receipts qualify as DPGR or non-DPGR, and whether CGS or deductions relate to DPGR or non-DPGR, must be made in accordance with the rules provided in §§ 1.199–1 through 1.199–8, as applicable. If the gross receipts are recognized in an intercompany transaction within the meaning of § 1.1502–13, see also § 1.199–7(d). See § 1.199–4 for allocation and apportionment of CGS and deductions.

(2) *Percentage of completion method.* A taxpayer using the percentage of completion method under section 460 must determine the ratio of DPGR and non-DPGR using a reasonable method that accurately identifies the gross receipts that constitute DPGR. See paragraph (d)(1) of this section for the factors taken into consideration in determining whether the taxpayer's method is reasonable.

(3) *Example.* The following example illustrates the application of paragraph (e)(1) of this section:

Example. X, a calendar year accrual method taxpayer, enters into a contract with Y, an unrelated person, in 2005 for the sale of QPP. In 2005, X receives an advance payment from Y for the QPP. In 2006, X manufactures the QPP within the United States and delivers the QPP to Y. X's method of accounting requires X to include the entire advance payment in its gross income for Federal income tax purposes in 2005. Assuming X can determine, using any reasonable method, that all the requirements of this section and § 1.199–3 will be met, the advance payment qualifies as DPGR in 2005. The CGS and deductions relating to the QPP under the contract are taken into account under § 1.199–4 in determining X's QPAI in 2006, the taxable year the CGS and deductions are otherwise deductible for Federal income tax purposes and must be treated as relating to DPGR in that taxable year.

§ 1.199–2 Wage limitation.

(a) *Rules of application*—(1) *In general.* The amount of the deduction allowable under § 1.199–1(a) (section 199 deduction) to a taxpayer for any taxable year shall not exceed 50 percent of the W–2 wages of the taxpayer. For this purpose, except as provided in paragraph (c) of this section, the Forms W–2, ''Wage and Tax Statement,'' used in determining the amount of W–2 wages are those issued for the calendar year ending during the taxpayer's taxable year for wages paid to employees (or former employees) of the taxpayer for employment by the taxpayer. For purposes of this section, employees of the taxpayer are limited to employees of the taxpayer as defined in section 3121(d)(1) and (2) (that is, officers of a corporate taxpayer and employees of the taxpayer under the common law rules). For purposes of section 199(b)(2) and this section, the term *taxpayer* means employer.

(2) *Wages paid by entity other than common law employer.* In determining W–2 wages, a taxpayer may take into account any wages paid by another entity and reported by the other entity on Forms W–2 with the other entity as

the employer listed in Box c of the Forms W–2, provided that the wages were paid to employees of the taxpayer for employment by the taxpayer. If the taxpayer is treated as an employer described in section 3401(d)(1) because of control of the payment of wages (that is, the taxpayer is not the common law employer of the payee of the wages), the payment of wages may not be included in determining W–2 wages of the taxpayer. If the taxpayer is paying wages as an agent of another entity to individuals who are not employees of the taxpayer, the wages may not be included in determining the W–2 wages of the taxpayer.

(b) *No application in determining whether amounts are wages for employment tax purposes.* The discussion of wages in this section is for purposes of section 199 only and has no application in determining whether amounts are wages under section 3121(a) for purposes of the Federal Insurance Contributions Act (FICA), under section 3306(b) for purposes of the Federal Unemployment Tax Act (FUTA), under section 3401(a) for purposes of the Collection of Income Tax at Source on Wages (Federal income tax withholding), or any other wage related determination.

(c) *Application in case of taxpayer with short taxable year.* In the case of a taxpayer with a short taxable year, subject to the rules of paragraph (a) of this section, the W–2 wages of the taxpayer for the short taxable year shall include those wages paid during the short taxable year to employees of the taxpayer as determined under the tracking wages method described in paragraph (f)(2)(iii) of this section. In applying the tracking wages method in the case of a short taxable year, the taxpayer must apply the method as follows—

(1) In paragraph (f)(2)(iii)(A) of this section, the total amount of wages subject to Federal income tax withholding and reported on Form W–2 must include only those wages subject to Federal income tax withholding that are actually paid to employees during the short taxable year and reported on Form W–2 for the calendar year ending within that short taxable year;

(2) In paragraph (f)(2)(iii)(B) of this section, only the supplemental unemployment benefits paid during the short taxable year that were included in the total in paragraph (f)(2)(iii)(A) of this section as modified by paragraph (c)(1) of this section are required to be deducted; and

(3) In paragraph (f)(2)(iii)(C) of this section, only the portion of the amounts reported in Box 12, Codes D, E, F, G, and S, on Forms W–2, that are actually deferred or contributed during the short taxable year may be included in W–2 wages.

(d) *Acquisition or disposition of a trade or business (or major portion).* If a taxpayer (a successor) acquires a trade or business, the major portion of a trade or business, or the major portion of a separate unit of a trade or business from another taxpayer (a predecessor), then, for purposes of computing the respective section 199 deduction of the successor and of the predecessor, the W–2 wages paid for that calendar year shall be allocated between the successor and the predecessor based on whether the wages are for employment by the successor or for employment by the predecessor. Thus, in this situation, the W–2 wages are allocated based on whether the wages are for employment for a period during which the employee was employed by the predecessor or for employment for a period during which the employee was employed by the successor, regardless of which permissible method for Form W–2 reporting is used.

(e) *Non-duplication rule.* Amounts that are treated as W–2 wages for a taxable year under any method may not be treated as W–2 wages of any other taxable year. Also, an amount may not be treated as W–2 wages by more than one taxpayer.

(f) *Definition of W–2 wages*—(1) *In general.* Section 199(b)(2) defines *W–2 wages* for purposes of section 199(b)(1) as the sum of the amounts required to be included on statements under section 6051(a)(3) and (8) with respect to employment of employees of the taxpayer for the calendar year. Thus, the term *W–2 wages* includes the total amount of wages as defined in section 3401(a); the total amount of elective deferrals (within the meaning of section 402(g)(3)); the compensation deferred under section 457; and for taxable years beginning after December 31, 2005, the amount of designated Roth contributions (as defined in section 402A). Under the 2004 and 2005 Form W–2, the elective deferrals under section 402(g)(3) and the amounts deferred under section 457 directly correlate to coded items reported in Box 12 on Form W–2. Box 12, Code D, is for elective deferrals to a section 401(k) cash or deferred arrangement; Box 12, Code E, is for elective deferrals under a section 403(b) salary reduction agreement; Box 12, Code F, is for elective deferrals under a section 408(k)(6) salary reduction Simplified Employee Pension (SEP); Box 12, Code G, is for elective deferrals under a section 457(b) plan; and Box 12, Code S, is for employee salary reduction contributions under a section 408(p) SIMPLE (simple retirement account).

(2) *Methods for calculating W–2 wages.* For any taxable year, taxpayers may use one of three methods in calculating W–2 wages. These three methods are subject to the non-duplication rule provided in paragraph (e) of this section, and the tracking wages method is subject to the rule provided in paragraph (c) of this section, if applicable.

(i) *Unmodified box method.* Under the Unmodified box method, W–2 wages are calculated by taking, without modification, the lesser of—

(A) The total entries in Box 1 of all Forms W–2 filed with the Social Security Administration (SSA) by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer; or

(B) The total entries in Box 5 of all Forms W–2 filed with the SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer.

(ii) *Modified Box 1 method.* Under the Modified Box 1 method, the taxpayer makes modifications to the total entries in Box 1 of Forms W–2 filed with respect to employees of the taxpayer. W–2 wages under this method are calculated as follows—

(A) Total the amounts in Box 1 of all Forms W–2 filed with the SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer;

(B) Subtract from the total in paragraph (f)(2)(ii)(A) of this section amounts included in Box 1 of Forms W–2 that are not wages for Federal income tax withholding purposes and amounts included in Box 1 of Forms W–2 that are treated as wages under section 3402(o) (for example, supplemental unemployment benefits); and

(C) Add to the amount obtained after paragraph (f)(2)(ii)(B) of this section amounts that are reported in Box 12 of Forms W–2 with respect to employees of the taxpayer for employment by the taxpayer and that are properly coded D, E, F, G, or S.

(iii) *Tracking wages method.* Under the Tracking wages method, the taxpayer actually tracks total wages subject to Federal income tax withholding and makes appropriate modifications. W–2 wages under this method are calculated as follows—

(A) Total the amounts of wages subject to Federal income tax withholding that are paid to employees of the taxpayer for employment by the taxpayer and that are reported on Forms

W–2 filed with the SSA by the taxpayer for the calendar year;

(B) Subtract from the total in paragraph (f)(2)(iii)(A) of this section the supplemental unemployment compensation benefits (as defined in section 3402(o)(2)(A)) that were included in the total in paragraph (f)(2)(iii)(A) of this section; and

(C) Add to the amount obtained after paragraph (f)(2)(iii)(B) of this section amounts that are reported in Box 12 of Forms W–2 with respect to employees of the taxpayer for employment by the taxpayer and that are properly coded D, E, F, G, or S.

§ 1.199–3 Domestic production gross receipts.

(a) *In general.* Domestic production gross receipts (DPGR) are the gross receipts (as defined in paragraph (c) of this section) of the taxpayer that are derived from (as defined in paragraph (h) of this section)—

(1) Any lease, rental, license, sale, exchange, or other disposition of—

(i) Qualifying production property (QPP) (as defined in paragraph (i)(1) of this section) that is manufactured, produced, grown, or extracted (MPGE) (as defined in paragraph (d) of this section) by the taxpayer (as defined in paragraph (e) of this section) in whole or in significant part (as defined in paragraph (f) of this section) within the United States (as defined in paragraph (g) of this section);

(ii) Any qualified film (as defined in paragraph (j) of this section) produced by the taxpayer (in accordance with paragraph (j) of this section); or

(iii) Electricity, natural gas, or potable water (as defined in paragraph (k) of this section) (collectively, utilities) produced by the taxpayer in the United States (in accordance with paragraph (k) of this section);

(2) Construction (as defined in paragraph (l) of this section) performed in the United States (in accordance with paragraph (l) of this section); or

(3) Engineering or architectural services (as defined in paragraph (m) of this section) performed in the United States for construction projects in the United States (in accordance with paragraph (m) of this section).

(b) *Related persons*—(1) *In general.* DPGR does not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person. A person is treated as related to another person if both persons are treated as a single employer under either section 52(a) or (b) (without regard to section 1563(b)), or section 414(m) or (o).

(2) *Exceptions.* Paragraph (b)(1) of this section does not apply to any QPP or qualified films leased or rented by the taxpayer to a related person if the QPP or qualified films are held for sublease or rent, or are subleased or rented, by the related person to an unrelated person for the ultimate use of the unrelated person. Similarly, paragraph (b)(1) of this section does not apply to the license of QPP or qualified films to a related person for reproduction and sale, exchange, lease, rental or sublicense to an unrelated person for the ultimate use of the unrelated person.

(c) *Definition of gross receipts.* The term *gross receipts* means the taxpayer's receipts for the taxable year that are recognized under the taxpayer's methods of accounting used for Federal income tax purposes for the taxable year. If the gross receipts are recognized in an intercompany transaction within the meaning of § 1.1502–13, see also § 1.199–7(d). For this purpose, gross receipts include total sales (net of returns and allowances) and all amounts received for services. In addition, gross receipts include any income from investments and from incidental or outside sources. For example, gross receipts include interest (including original issue discount and tax-exempt interest within the meaning of section 103), dividends, rents, royalties, and annuities, regardless of whether the amounts are derived in the ordinary course of the taxpayer's trade of business. Gross receipts are not reduced by cost of goods sold (CGS) or by the cost of property sold if such property is described in section 1221(a)(1), (2), (3), (4), or (5). Gross receipts do not include the amounts received in repayment of a loan or similar instrument (for example, a repayment of the principal amount of a loan held by a commercial lender) and, except to the extent of gain recognized, do not include gross receipts derived from a non-recognition transaction, such as a section 1031 exchange. Finally, gross receipts do not include amounts received by the taxpayer with respect to sales tax or other similar state and local taxes if, under the applicable state or local law, the tax is legally imposed on the purchaser of the good or service and the taxpayer merely collects and remits the tax to the taxing authority. If, in contrast, the tax is imposed on the taxpayer under the applicable law, then gross receipts include the amounts received that are allocable to the payment of such tax.

(d) *Definition of manufactured, produced, grown, or extracted*—(1) *In general.* Except as provided in paragraphs (d)(2) and (3) of this section, the term *MPGE* includes manufacturing, producing, growing, extracting, installing, developing, improving, and creating QPP; making QPP out of scrap, salvage, or junk material as well as from new or raw material by processing, manipulating, refining, or changing the form of an article, or by combining or assembling two or more articles; cultivating soil, raising livestock, fishing, and mining minerals. The term *MPGE* also includes storage, handling, or other processing activities (other than transportation activities) within the United States related to the sale, exchange, or other disposition of agricultural products, provided the products are consumed in connection with, or incorporated into, the MPGE of QPP whether or not by the taxpayer. The taxpayer must have the benefits and burdens of ownership of the QPP under Federal income tax principles during the period the MPGE activity occurs, pursuant to paragraph (e)(1) of this section, in order for gross receipts derived from the MPGE of QPP to qualify as DPGR.

(2) *Packaging, repackaging, labeling, or minor assembly.* If a taxpayer packages, repackages, labels, or performs minor assembly of QPP and the taxpayer engages in no other MPGE activity with respect to that QPP, the taxpayer's packaging, repackaging, labeling, or minor assembly do not qualify as MPGE.

(3) *Installing.* If a taxpayer installs an item of QPP and engages in no other MPGE with respect to the QPP, the taxpayer's installing activity does not qualify as MPGE. However, if the taxpayer installs an item of QPP MPGE by the taxpayer, and the taxpayer has the benefits and burdens of ownership of the item of QPP under Federal income tax principles during the period the installing activity occurs, the portion of the installing activity that relates to the item of QPP is MPGE.

(4) *Consistency with section 263A.* A taxpayer that has MPGE QPP for the taxable year should treat itself as a producer under section 263A with respect to the QPP for the taxable year unless the taxpayer is not subject to section 263A. A taxpayer that currently is not properly accounting for its production activities under section 263A, and wishes to change its method of accounting to comply with the producer requirements of section 263A, must follow the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 97–27 (1997–1 C.B. 680), or Rev. Proc.

2002–9 (2002–1 C.B. 327), whichever applies (see § 601.601(d)(2) of this chapter)).

(5) *Examples.* The following examples illustrate the application of this paragraph (d):

Example 1. A, B, and C are unrelated taxpayers and are not cooperatives to which Part I of subchapter T of the Internal Revenue Code applies. A owns grain storage bins in the United States in which it stores for a fee B's agricultural products that were grown in the United States. B sells its agricultural products to C. C processes B's agricultural products into refined agricultural products in the United States. The gross receipts from A's, B's, and C's activities are DPGR from the MPGE of QPP.

Example 2. The facts are the same as in *Example 1* except that B grows the agricultural products outside the United States and C processes B's agricultural products into refined agricultural products outside the United States. Pursuant to paragraph (d)(1) of this section, the gross receipts derived by A are DPGR from the MPGE of QPP within the United States. B's and C's respective activities occur outside the United States and, therefore, their respective gross receipts are non-DPGR.

Example 3. Y is hired to reconstruct and refurbish unrelated customers' tangible personal property. As part of the reconstruction and refurbishment, Y installs purchased replacement parts in the customers' property. Y's installation of purchased replacement parts does not qualify as MPGE pursuant to paragraph (d)(3) of this section because Y did not MPGE the replacement parts.

Example 4. The facts are the same as in *Example 3* except that Y manufactures the replacement parts it uses for the reconstruction and refurbishment of customers' tangible personal property. Y has the benefits and burdens of ownership of the replacement parts during the reconstruction and refurbishment activity and while installing the parts. Y's gross receipts from the MPGE of the replacement parts and Y's gross receipts from the installation of the replacement parts, which is an MPGE activity pursuant to paragraph (d)(3) of this section, are DPGR.

Example 5. Z MPGE QPP within the United States. The following activities are performed by Z as part of the MPGE of the QPP while Z has the benefits and burdens of ownership under Federal income tax principles: materials analysis and selection, subcontractor inspections and qualifications, testing of component parts, assisting customers in their review and approval of the QPP, routine production inspections, product documentation, diagnosis and correction of system failure, and packaging for shipment to customers. Because Z MPGE the QPP, these activities performed by Z are part of the MPGE of the QPP.

Example 6. X purchases automobiles from unrelated parties and customizes them by adding ground effects, spoilers, custom wheels, specialized paint and decals, sunroofs, roof racks, and similar accessories. X does not manufacture any of the accessories. X's activity is minor assembly under paragraph (d)(2) of this section which is not an MPGE activity.

Example 7. The facts are the same as in *Example 6* except that X manufactures some of the accessories it adds to the automobiles. Pursuant to § 1.199–1(c)(2), if an automobile with accessories does not meet the requirements for being an item, X must treat each accessory that it manufactures as an item for purposes of determining whether X MPGE the item in whole or in significant part within the United States under paragraph (f)(1) of this section and whether the installation of the item is MPGE under paragraph (d)(3) of this section.

Example 8. Y manufactures furniture in the United States that it sells to unrelated persons. Y also engraves customers' names on pens and pencils purchased from unrelated persons and sells the pens and pencils to such customers. Although Y's sales of furniture qualify as DPGR if all the other requirements of this section are met, Y's sales of the engraved pens and pencils do not qualify as DPGR because Y does not MPGE the pens and pencils.

(e) *Definition of by the taxpayer*—(1) *In general.* With the exception of the rules applicable to an expanded affiliated group (EAG) under § 1.199–7, certain oil and gas partnerships under paragraph (h)(7) of this section, EAG partnerships under paragraph (h)(8) of this section, and government contracts in paragraph (e)(2) of this section, only one taxpayer may claim the deduction under § 1.199–1(a) with respect to any qualifying activity under paragraph (d)(1) of this section performed in connection with the same QPP, or the production of qualified films or utilities. If one taxpayer performs a qualifying activity under paragraph (d)(1), (j)(1), or (k)(1) of this section pursuant to a contract with another party, then only the taxpayer that has the benefits and burdens of ownership of the property under Federal income tax principles during the period the qualifying activity occurs is treated as engaging in the qualifying activity.

(2) *Special rule for certain government contracts.* QPP, qualified films, or utilities will be treated as MPGE or otherwise produced by the taxpayer notwithstanding the requirements of paragraph (e)(1) of this section if—

(i) The QPP, qualified films, or utilities are MPGE or otherwise produced by the taxpayer pursuant to a contract with the Federal government; and

(ii) The Federal Acquisition Regulation (48 CFR) requires that title or risk of loss with respect to the QPP, qualified films, or utilities be transferred to the Federal government before the MPGE of the QPP, or the production of the qualified films or utilities, is complete.

(3) *Examples.* The following examples illustrate the application of this paragraph (e):

Example 1. X designs machines that it uses in its trade or business. X contracts with Y, an unrelated taxpayer, for the manufacture of the machines. The contract between X and Y is a fixed-price contract. The contract specifies that the machines will be manufactured in the United States using X's design. X owns the intellectual property attributable to the design and provides it to Y with a restriction that Y may only use it during the manufacturing process and has no right to exploit the intellectual property. The contract specifies that Y controls the details of the manufacturing process while the machines are being produced; Y bears the risk of loss or damage during manufacturing of the machines; and Y has the economic loss or gain upon the sale of the machines based on the difference between Y's costs and the fixed price. Y has legal title during the manufacturing process and legal title to the machines is not transferred to X until final manufacturing of the machines has been completed. Based on all of the facts and circumstances, pursuant to paragraph (e)(1) of this section Y has the benefits and burdens of ownership of the machines under Federal income tax principles during the period the manufacturing occurs and, as a result, Y is treated as the manufacturer of the machines.

Example 2. X designs and engineers machines that it sells to customers. X contracts with Y, an unrelated taxpayer, for the manufacture of the machines. The contract between X and Y is a cost-reimbursable type contract. X has the benefits and burdens of ownership of the machines under Federal income tax principles during the period the manufacturing occurs except that legal title to the machines is not transferred to X until final manufacturing of the machines is completed. Based on all of the facts and circumstances, X is treated as the manufacturer of the machines under paragraph (e)(1) of this section.

(f) *Definition of in whole or in significant part*—(1) *In general.* QPP must be MPGE in whole or in significant part by the taxpayer and in whole or in significant part within the United States to qualify under section 199(c)(4)(A)(i)(I). If a taxpayer enters into a contract pursuant to paragraph (e)(1) of this section with an unrelated party for the unrelated party to MPGE QPP for the taxpayer and the taxpayer has the benefits and burdens of ownership of the QPP under applicable Federal income tax principles during the period the MPGE activity occurs, then the taxpayer is considered to MPGE the QPP under this section. The unrelated party must perform the MPGE activity on behalf of the taxpayer in whole or in significant part within the United States in order for the taxpayer to satisfy the requirements of this paragraph (f)(1).

(2) *Substantial in nature.* QPP will be treated as MPGE in significant part by the taxpayer within the United States for purposes of paragraph (f)(1) of this section if the MPGE of the QPP by the taxpayer within the United States is substantial in nature taking into account all of the facts and circumstances, including the relative value added by, and relative cost of, the taxpayer's MPGE activity within the United States, the nature of the property, and the nature of the MPGE activity that the taxpayer performs within the United States. Research and experimental activities under section 174 and the creation of intangibles do not qualify as substantial in nature for any QPP other than computer software (as defined in paragraph (i)(3) of this section) and sound recordings (as defined in paragraph (i)(4) of this section). In the case of an EAG member, an EAG partnership (as defined in paragraph (h)(8) of this section), or members of an EAG in which the partners of the EAG partnership are members, in determining whether the substantial in nature requirement is met with respect to an item of QPP, all of the previous activities of the members of the EAG, the EAG partnership, and all members of the EAG in which the partners of the EAG partnership are members, as applicable, are taken into account.

(3) *Safe harbor.* A taxpayer will be treated as having MPGE QPP in whole or in significant part within the United States for purposes of paragraph (f)(1) of this section if, in connection with the QPP, conversion costs (direct labor and related factory burden) of such taxpayer to MPGE the QPP within the United States account for 20 percent or more of the taxpayer's CGS of the QPP. For purposes of the safe harbor under this paragraph (f)(3), research and experimental expenditures under section 174 and the costs of creating intangibles do not qualify as conversion costs for any QPP other than computer software and sound recordings. In the case of tangible personal property (as defined in paragraph (i)(2) of this section), research and experimental expenditures under section 174 and any other costs incurred in the creation of intangibles may be excluded from CGS for purposes of determining whether the taxpayer meets the safe harbor under this paragraph (f)(3). For purposes of this safe harbor, research and experimental expenditures under section 174 and any other costs of creating intangibles for computer software and sound recordings must be allocated to the computer software and sound recordings to which the expenditures and costs relate under § 1.199–4(b). In the case of an EAG member, an EAG partnership, or members of an EAG in which the partners of the EAG partnership are members, in determining whether the requirements of the safe harbor under this paragraph (f)(3) are met with respect to an item of QPP, all of the previous conversion costs of the members of the EAG, the EAG partnership, and all members of the EAG in which the partners of the EAG partnership are members, as applicable, to MPGE the QPP are taken into account. If a taxpayer enters into a contract with an unrelated party for the unrelated party to MPGE QPP for the taxpayer, and the taxpayer is considered pursuant to paragraph (e)(1) of this section to MPGE the QPP, then for purposes of this safe harbor the taxpayer's conversion costs shall include both the taxpayer's conversion costs as well as the conversion costs of the unrelated party to MPGE the QPP under the contract.

(4) *Examples.* The following examples illustrate the application of this paragraph (f):

Example 1. X purchases from Y unrefined oil extracted outside the United States and X refines the oil in the United States. The refining of the oil by X is an MPGE activity that is substantial in nature.

Example 2. X purchases gemstones and precious metal from outside the United States and then uses these materials to produce jewelry within the United States by cutting and polishing the gemstones, melting and shaping the metal, and combining the finished materials. X's activity is substantial in nature under paragraph (f)(2) of this section. Therefore, X has MPGE the jewelry in significant part within the United States.

Example 3. (i) X operates an automobile assembly plant in the United States. In connection with such activity, X purchases assembled engines, transmissions, and certain other components from Y, an unrelated taxpayer, and X assembles all of the component parts into an automobile. X also conducts stamping, machining, and subassembly operations, and X uses tools, jigs, welding equipment, and other machinery and equipment in the assembly of automobiles. On a per-unit basis, X's selling price and costs of such automobiles are as follows:

Selling price: $2,500
Cost of goods sold:
  Material—Acquired from Y: $1,475
  Conversion costs (direct labor and factory burden): $325
  Total cost of goods sold: $1,800
Gross profit: $700
Administrative and selling expenses: $300
Taxable income: $400

(ii) Although X's conversion costs are less than 20 percent of total CGS ($325/$1,800, or 18 percent), the operations conducted by X in connection with the property purchased and sold are substantial in nature under paragraph (f)(2) of this section because of the nature of X's activity and the relative value of X's activity. Therefore, X's automobiles will be treated as MPGE in significant part by X within the United States for purposes of paragraph (f)(1) of this section.

Example 4. X produces a qualified film (as defined in paragraph (j)(1) of this section) and licenses the film to Y, an unrelated taxpayer, for duplication of the film onto DVDs. Y purchases the DVDs from an unrelated person. Unless Y satisfies the safe harbor under paragraph (f)(3) of this section, Y's income for duplicating X's qualified film onto the DVDs is non-DPGR because the duplication is not substantial in nature relative to the DVD with the film.

Example 5. X imports into the United States QPP that is partially manufactured. X completes the manufacture of the QPP within the United States and X's completion of the manufacturing of the QPP within the United States satisfies the in whole or in significant part requirement under paragraph (f)(1) of this section. Therefore, X's gross receipts from the lease, rental, license, sale, exchange, or other disposition of the QPP qualify as DPGR if all other applicable requirements under this section are met.

Example 6. X manufactures QPP in significant part within the United States and exports the QPP for further manufacture outside the United States. Assuming X meets all the requirements under this section for the QPP after the further manufacturing, X's gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the QPP will be considered DPGR, regardless of whether the QPP is imported back into the United States prior to the lease, rental, license, sale, exchange, or other disposition of the QPP.

Example 7. X is a retailer that sells cigars and pipe tobacco that X purchases from an unrelated person. While being displayed and offered for sale by X, the cigars and pipe tobacco age on X's shelves in a room with controlled temperature and humidity. Although X's cigars and pipe tobacco may become more valuable as they age, the gross receipts derived by X from the sale of the cigars and pipe tobacco are non-DPGR because the aging of the cigars and pipe tobacco while being displayed and offered for sale by X does not qualify as an MPGE activity that occurs in whole or in significant part within the United States.

(g) *Definition of United States.* For purposes of this section, the term *United States* includes the 50 states, the District of Columbia, the territorial waters of the United States, and the seabed and subsoil of those submarine areas that are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and

exploitation of natural resources. The term *United States* does not include possessions and territories of the United States or the airspace or space over the United States and these areas.

(h) *Definition of derived from the lease, rental, license, sale, exchange, or other disposition*—(1) *In general.* The term *derived from the lease, rental, license, sale, exchange, or other disposition* is defined as, and limited to, the gross receipts directly derived from the lease, rental, license, sale, exchange, or other disposition, even if the taxpayer has already recognized gross receipts from a previous lease, rental, license, sale, exchange, or other disposition of the same property. Applicable Federal income tax principles apply to determine whether a transaction is, in substance, a lease, rental, license, sale, exchange or other disposition, or whether it is a service (or some combination thereof). For example, gross receipts derived from the sale of QPP includes gross receipts derived from the sale of QPP MPGE in whole or in significant part within the United States by a taxpayer for sale, as well as gross receipts derived from the sale of QPP MPGE in whole or in significant part within the United States by a taxpayer and used in the taxpayer's trade or business before being sold. The entire amount of lease income including any interest that is not separately stated is considered derived from the lease of QPP or a qualified film. In addition, the proceeds from business interruption insurance, governmental subsidies, and governmental payments not to produce are treated as gross receipts derived from the lease, rental, license, sale, exchange, or other disposition to the extent that they are substitutes for gross receipts that would qualify as DPGR. The value of property received by a taxpayer in a taxable exchange of QPP MPGE in whole or in significant part within the United States, qualified films, or utilities for an unrelated person's property is DPGR for the taxpayer (assuming all the other requirements of this section are met). However, unless the taxpayer further MPGE the QPP or further produces the qualified films or utilities received in the exchange, any gross receipts from the subsequent sale by the taxpayer of the property received in the exchange are non-DPGR because the taxpayer did not MPGE or otherwise produce such property, even if the property was QPP, qualified films, or utilities in the hands of the other person.

(2) *Examples.* The following examples illustrate the application of paragraph (h)(1) of this section:

Example 1. X MPGE QPP within the United States and sells the QPP to Y, an unrelated person. Y leases the QPP for 3 years to Z, a taxpayer unrelated to both X and Y, and shortly thereafter, X repurchases the QPP from Y subject to the lease. At the end of the lease term, Z purchases the QPP from X. X's proceeds derived from the sale of the QPP to Y, from the lease to Z, and from the sale of the QPP to Z all qualify as DPGR (assuming all the other requirements of this section are met).

Example 2. X MPGE QPP within the United States and sells the QPP to Y, an unrelated taxpayer, for $25,000. X finances Y's purchase of the QPP and receives total payments of $35,000, of which $10,000 relates to interest and finance charges. The $25,000 qualifies as DPGR but the $10,000 in interest and finance charges do not qualify as DPGR because the $10,000 is not derived from the MPGE of QPP within the United States but rather from X's lending activity.

Example 3. Cable company X charges subscribers $15 a month for its basic cable television. Y, an unrelated taxpayer, produces in the United States all of the programs on its cable channel which it licenses to X for $.10 per subscriber per month. The programs are qualified films within the meaning of paragraph (j)(1) of this section. The gross receipts derived by Y are derived from a license of a qualified film produced by Y and are DPGR (assuming all the other requirements of this section are met).

(3) *Hedging transactions*—(i) *In general.* For purposes of this section, provided that the risk being hedged relates to QPP described in section 1221(a)(1) or property described in section 1221(a)(8) consumed in the activity giving rise to DPGR, and provided that the transaction is a hedging transaction within the meaning of section 1221(b)(2) and § 1.1221–2(b), then—

(A) In the case of a hedge of purchases of property described in section 1221(a)(1), gain or loss on the hedging transaction must be taken into account in determining CGS;

(B) In the case of a hedge of sales of property described in section 1221(a)(1), gain or loss on the hedging transaction must be taken into account in determining DPGR; and

(C) In the case of a hedge of purchases of property described in section 1221(a)(8), gain or loss on the hedging transaction must be taken into account in determining DPGR.

(ii) *Currency fluctuations.* For purposes of this section, in the case of a transaction that manages the risk of currency fluctuations, the determination of whether the transaction is a hedging transaction within the meaning of § 1.1221–2(b) is made without regard to whether the transaction is a section 988 transaction. See § 1.1221–2(a)(4). The preceding sentence applies only to the extent that § 1.988–5(b) does not apply.

(iii) *Other rules.* See § 1.1221–2(e) for rules applicable to hedging by members of a consolidated group and § 1.446–4 for rules regarding the timing of income, deductions, gain, or loss with respect to hedging transactions.

(4) *Allocation of gross receipts—embedded services and non-qualified property*—(i) *In general.* Except as otherwise provided in paragraph (h)(4)(ii), paragraph (l) (relating to construction), and paragraph (m) (relating to architectural and engineering services) of this section, gross receipts derived from the performance of services do not qualify as DPGR. In the case of an embedded service, that is, a service the price of which is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of QPP, qualified films, or utilities, DPGR includes only the receipts from the lease, rental, license, sale, exchange, or other disposition of the item (if all the other requirements of this section are met) and not any receipts attributable to the embedded service by the taxpayer. In addition, DPGR does not include the gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of property that does not meet all of the requirements under this section (non-qualified property). For example, gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of a replacement part that is non-qualified property does not qualify as DPGR.

(ii) *Exceptions.* There are five exceptions to the rules under paragraph (h)(4)(i) of this section regarding embedded services and non-qualified property. A taxpayer may include in DPGR, if all the other requirements of this section are met with respect to the underlying item of property to which the embedded services or non-qualified property relate, gross receipts derived from—

(A) A qualified warranty, that is, a warranty that is provided in connection with the lease, rental, license, sale, exchange, or other disposition of QPP, qualified films or utilities if—

(*1*) In the normal course of the taxpayer's business, the price for the warranty is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of the property; and

(*2*) The warranty is neither separately offered by the taxpayer nor separately bargained for with the customer (that is, a customer cannot purchase the property without the warranty);

(B) A qualified delivery, that is, a delivery or distribution service that is provided in connection with the lease, rental, license, sale, exchange, or other disposition of QPP if—

(*1*) In the normal course of the taxpayer's business, the price for the delivery or distribution service is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of the property; and

(*2*) The delivery or distribution service is neither separately offered by the taxpayer nor separately bargained for with the customer (that is, a customer cannot purchase the property without delivery or distribution service);

(C) A qualified operating manual, that is, a manual of instructions (including electronic instructions) that is provided in connection with the lease, rental, license, sale, exchange, or other disposition of QPP, qualified films or utilities if—

(*1*) In the normal course of the taxpayer's business, the price for the manual is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of the property;

(*2*) The manual is neither separately offered by the taxpayer nor separately bargained for with the customer (that is, a customer cannot purchase the property without the manual); and

(*3*) The manual is not provided in connection with a training course for the customer;

(D) A qualified installation, that is, an installation service (including minor assembly) for QPP that is provided in connection with the lease, rental, license, sale, exchange, or other disposition of the QPP if—

(*1*) In the normal course of the taxpayer's business, the price for the installation service is not separately stated from the amount charged for the lease, rental, license, sale, exchange, or other disposition of the property; and

(*2*) The installation is neither separately offered by the taxpayer nor separately bargained for with the customer (that is, a customer cannot purchase the property without the installation service); and

(E) A *de minimis* amount of gross receipts from embedded services and non-qualified property for each item of QPP, qualified films, or utilities. For purposes of the preceding sentence, a *de minimis* amount of gross receipts from embedded services and non-qualified property is less than 5 percent of the total gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of each item of QPP, qualified films, or utilities (including the gross receipts for the embedded services and property described in paragraphs (h)(4)(ii)(A), (B), (C), (D) and (k)(4)(iv) of this section). The allocation of the gross receipts attributable to the embedded services or non-qualified property will be deemed to be reasonable if the allocation reflects the fair market value of the embedded services or property. In the case of gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of QPP, qualified films, and utilities that are received over a period of time (for example, a multi-year lease or installment sale), this *de minimis* exception is applied by taking into account the total gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the item of QPP, qualified films, or utilities. For purposes of applying this *de minimis* exception, the gross receipts described in paragraphs (h)(4)(ii)(A), (B), (C), (D) and (k)(4)(iv) of this section are treated as DPGR. This *de minimis* exception does not apply if the prices of the services or non-qualified property are separately stated by the taxpayer, or if the services or non-qualified property are separately offered or separately bargained for with the customer (that is, the customer can purchase the property without the services or non-qualified property).

(iii) *Examples.* The following examples illustrate the application of this paragraph (h)(4):

Example 1. X MPGE QPP within the United States. As part of the sale of the QPP to Z, X trains Z's employees on how to use and operate the QPP. No other services or property are provided to Z in connection with the sale of the QPP to Z. The QPP and training services are separately stated in the sales contract. Because the training services are separately stated, the training services are not treated as embedded services under the *de minimis* exception in paragraph (h)(4)(ii)(E) of this section.

Example 2. The facts are the same as in *Example 1* except that the training services are not separately stated in the sales contract and the customer cannot purchase the QPP without the training services. If the gross receipts for the embedded training services are less than 5 percent of the gross receipts derived from the sale of X's QPP to Z, including the gross receipts for the training services, then the gross receipts may be included in DPGR under the *de minimis* exception in paragraph (h)(4)(ii)(E) of this section.

Example 3. X MPGE QPP within the United States. As part of the sale of the QPP to retailers, X charges a fee for delivering the QPP. The price of the QPP and the delivery fee are separately stated in the sales contract. The retailer's customers cannot purchase the QPP without paying for the delivery fee. Because the delivery fee is separately stated, the delivery fee does not qualify as DPGR under the qualified delivery exception in paragraph (h)(4)(ii)(B) of this section or the *de minimis* exception under paragraph (h)(4)(ii)(E) of this section.

Example 4. X enters into a single, lump-sum priced contract with Y, an unrelated taxpayer, and the contract has the following terms: X will produce QPP within the United States for Y; X will deliver the QPP to Y; X will provide a one-year warranty on the QPP; X will provide operating and maintenance manuals with the QPP; X will provide 100 hours of training and training manuals to Y's employees on the use and maintenance of the QPP; X will provide purchased spare parts for the QPP; and X will provide a 3-year service agreement for the QPP. None of the services or property was separately offered or separately bargained for. The receipts for the production of the QPP are DPGR under paragraphs (d)(1) and (f) of this section (assuming all the other requirements of this section are met). X may include in DPGR the gross receipts for delivering the QPP, which is a qualified delivery under paragraph (h)(4)(ii)(B) of this section; the gross receipts for the one-year warranty, which is a qualified warranty under paragraph (h)(4)(ii)(A) of this section; and the gross receipts for the operating and maintenance manuals, each of which is a qualified operating manual under paragraph (h)(4)(ii)(C) of this section. If the gross receipts for the embedded services consisting of the employee training and 3-year service agreement, and for the non-qualified property consisting of the purchased spare parts and the employee training manuals, which are not qualified operating manuals, are in total less than 5 percent of the gross receipts derived from the sale of X's QPP to Y (including the gross receipts for the embedded services and non-qualified property), those gross receipts may be included in DPGR (assuming there are no other embedded services or non-qualified property under the contract) under the *de minimis* exception in paragraph (h)(4)(ii)(E) of this section. If, however, the gross receipts for the embedded services and non-qualified property consisting of employee training, the 3-year service agreement, purchased spare parts, and employee training manuals equal or exceed 5 percent of the gross receipts derived from the sale of X's QPP to Y (including the gross receipts for the embedded services and non-qualified property), those gross receipts do not qualify as DPGR under the *de minimis* exception in paragraph (h)(4)(ii)(E) of this section.

(5) *Advertising income*—(i) *Tangible personal property.* A taxpayer's gross receipts that are derived from the lease, rental, license, sale, exchange, or other disposition of newspapers, magazines, telephone directories, or periodicals that are MPGE in whole or in significant part within the United States include advertising income from advertisements placed in those media, but only to the extent the gross receipts, if any, derived from the lease, rental, license, sale,

exchange, or other disposition of the newspapers, magazines, telephone directories, or periodicals are DPGR (without regard to this paragraph (h)(5)(i)).

(ii) *Qualified films.* A taxpayer's gross receipts that are derived from the lease, rental, license, sale, exchange, or other disposition of a qualified film include product-placement income with respect to that qualified film, that is, compensation for placing or integrating a product into the qualified film, but only to the extent the gross receipts derived from the qualified film (if any) are DPGR (without regard to this paragraph (h)(5)(ii)).

(iii) *Examples.* The following examples illustrate the application of this paragraph (h)(5):

Example 1. X MPGE and sells newspapers within the United States. X's gross receipts from the newspapers include gross receipts derived from the sale of newspapers to customers and payments from advertisers to publish display advertising or classified advertisements in X's newspapers. X's gross receipts described above are DPGR derived from the sale of X's newspapers.

Example 2. The facts are the same as in *Example 1* except that X also distributes with its newspapers advertising flyers that are MPGE by the advertiser. The fees X receives for distributing the advertising flyers are not derived from the sale of X's newspapers because X did not MPGE the advertising flyers that it distributes. As a result, the distribution fee is for the provision of a distribution service and is non-DPGR under paragraph (h)(5)(i) of this section.

Example 3. X produces two television programs that are qualified films (as defined in paragraph (j)(1) of this section). X licenses the first television program to Y's television station and X licenses the second television program to Z's television station. Both television programs contain product placements for which X received compensation. Z, but not Y, is a related person to X within the meaning of paragraph (b)(1) of this section. The gross receipts derived by X from licensing the qualified film to Y are DPGR. As a result, pursuant to paragraph (h)(5)(ii) of this section, all of X's product placement income for the first television program is treated as gross receipts that are derived from the license of the qualified film. The gross receipts derived by X from licensing the qualified film to Z are non-DPGR under paragraph (b)(1) of this section. As a result, pursuant to paragraph (h)(5)(ii) of this section, none of X's product placement income for the second television program is treated as gross receipts derived from the qualified film under paragraph (h)(5)(ii) of this section.

(6) *Computer software*—(i) *In general.* Gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of computer software (as defined in paragraph (i)(3) of this section) do not include gross receipts derived from Internet access services, online services, customer and technical support, telephone services, online electronic books and journals, games played through a Web site, provider-controlled software online access services, and other similar services that do not constitute the lease, rental, license, sale, exchange, or other disposition of computer software that was developed by the taxpayer.

(ii) *Examples.* The following examples illustrate the application of this paragraph (h)(6):

Example 1. X produces and prints a newspaper in the United States which it sells to customers. X also has an online version of the newspaper which is available only to subscribers. The gross receipts derived from the sale of the newspaper X produces and prints qualify as DPGR. However, because X's gross receipts from the online newspaper subscription are not derived from the lease, rental, license, sale, exchange, or disposition of computer software under paragraph (h)(6)(i) of this section, the gross receipts attributable to the online newspaper subscription fees are non-DPGR under paragraph (h)(6)(i) of this section.

Example 2. The facts are the same as in *Example 1* except that X's gross receipts attributable to the online version of its newspaper are derived from fees from customers to view the newspaper online and payments from advertisers to display advertising online. X's gross receipts derived from allowing customers online access to X's newspaper are non-DPGR because, pursuant to paragraph (h)(6)(i) of this section, the gross receipts relating to online newspapers are not derived from the lease, rental, license, sale, exchange, or other disposition of QPP, but rather is the provision of an online access service. As a result, because X's gross receipts from the online access services are non-DPGR, the related online advertising receipts are similarly non-DPGR under paragraph (h)(5)(i) of this section.

(7) *Exception for certain oil and gas partnerships*—(i) *In general.* If a partnership is engaged solely in the extraction, refining, or processing of oil or natural gas, and distributes the oil or natural gas or products derived from the oil or natural gas (products) to one or more partners, then each partner is treated as extracting, refining, or processing any oil or natural gas or products extracted, refined, or processed by the partnership and distributed to that partner. Thus, to the extent that the extracting, refining, or processing of the distributed oil or natural gas or products occurs in whole or in significant part within the United States, gross receipts derived by each partner from the sale, exchange, or other disposition of the distributed oil or natural gas or products are treated as DPGR (provided all requirements of this section are met). Solely for purposes of section 199(d)(1)(B)(ii), the partnership is treated as having gross receipts in the taxable year of the distribution equal to the fair market value of the distributed oil or natural gas or products at the time of distribution to the partner and the deemed gross receipts are allocated to that partner, provided the partner derives gross receipts from the distributed property during the taxable year of the partner with or within which the partnership's taxable year (in which the distribution occurs) ends. Costs included in the adjusted basis of the distributed oil or natural gas or products and any other relevant deductions are taken into account in computing the partner's QPAI. See § 1.199–5 for the application of section 199 to pass-thru entities.

(ii) *Example.* The following example illustrates the application of this paragraph (h)(7). Assume that PRS and X are calendar year taxpayers. The example reads as follows:

Example. X is a partner in PRS, a partnership which engages solely in the extraction of oil within the United States. In 2010, PRS distributes oil to X that PRS derived from its oil extraction. PRS incurred $600 of CGS, including $500 of W–2 wages (as defined in § 1.199–2(f)), extracting the oil distributed to X, and X's adjusted basis in the distributed oil is $600. The fair market value of the oil at the time of the distribution to X is $1,000. X incurs $200 of CGS, including $100 of W–2 wages, in refining the oil within the United States. In 2010, X sells the oil for $1,500 to a customer. Under paragraph (h)(7)(i) of this section, X is treated as having extracted the oil. The extraction and refining of the oil qualify as an MPGE activity under paragraph (d)(1) of this section. Therefore, X's $1,500 of gross receipts qualify as DPGR. X subtracts from the $1,500 of DPGR the $600 of CGS incurred by PRS and the $200 of refining costs incurred by X. Thus, X's QPAI is $700 for 2010. In addition, PRS is treated as having $1,000 of DPGR solely for purposes of applying the wage limitation of section 199(d)(1)(B)(ii). Accordingly, X's share of PRS's W–2 wages determined under section 199(d)(1)(B) is $72, the lesser of $500 (X's allocable share of PRS's W–2 wages included in CGS) and $72 (2 × ($400 ($1,000 deemed DPGR less $600 of CGS) × .09)). X adds the $72 of PRS W–2 wages to its $100 of W–2 wages incurred in refining the oil for purposes of section 199(b).

(8) *Partnerships owned by members of a single expanded affiliated group*—(i) *In general.* For purposes of this section, if all of the interests in the capital and profits of a partnership are owned by members of a single EAG at all times during the taxable year of the partnership (EAG partnership), then the EAG partnership and all members of that EAG are treated as a single taxpayer for purposes of section 199(c)(4) during that taxable year. Thus, if an EAG

partnership MPGE or produces property and distributes, leases, rents, licenses, sells, exchanges, or otherwise disposes of that property to a member of an EAG in which the partners of the EAG partnership are members, then the MPGE or production activity conducted by the EAG partnership will be treated as having been conducted by the members of the EAG. Similarly, if one or more members of an EAG in which the partners of an EAG partnership are members MPGE or produces property and contributes, leases, rents, licenses, sells, exchanges, or otherwise disposes of that property to the EAG partnership, then the MPGE or production activity conducted by the EAG member (or members) will be treated as having been conducted by the EAG partnership. Attribution of activities does not apply for purposes of the construction of real property under § 1.199–3(l)(1) and the performance of engineering and architectural services under § 1.199–3(m)(2) and (3), respectively. An EAG partnership may not use the small business simplified overall method described in § 1.199–4(f). Except as provided in this paragraph (h)(8), an EAG partnership is treated the same as other partnerships for purposes of section 199. Accordingly, an EAG partnership is subject to the rules of § 1.199–5 regarding the application of section 199 to pass-thru entities, including application of the section 199(d)(1)(B) wage limitation under § 1.199–5(a)(3). See paragraphs (f)(2) and (3) of this section for the aggregation of activities and conversion costs among EAG partnerships and all members of the EAG in which the partners of the EAG partnership are members.

(ii) *Special rules for distributions from EAG partnerships.* If an EAG partnership distributes property to a partner, then, solely for purposes of section 199(d)(1)(B)(ii), the EAG partnership is treated as having gross receipts in the taxable year of the distribution equal to the fair market value of the property at the time of distribution to the partner and the deemed gross receipts are allocated to that partner, provided the partner derives gross receipts from the distributed property during the taxable year of the partner with or within which the partnership's taxable year (in which the distribution occurs) ends. Costs included in the adjusted basis of the distributed property and any other relevant deductions are taken into account in computing the partner's QPAI.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (h)(8). Assume that PRS, X, Y, and Z all are calendar year taxpayers. The examples read as follows:

Example 1. Contribution. X and Y, both members of a single EAG, are the only partners in PRS, a partnership, for PRS's entire 2010 taxable year. In 2010, X MPGE QPP within the United States and contributes the property to PRS. In 2010, PRS sells the QPP for $1,000. PRS's $1,000 gross receipts constitute DPGR. PRS, X, and Y must apply the rules of § 1.199–5 regarding the application of section 199 to pass-thru entities with respect to the activity of PRS, including application of the section 199(d)(1)(B) wage limitation under § 1.199–5(a)(3).

Example 2. Sale. X, Y, and Z are the only members of a single EAG. X and Y each own 50% of the capital and profits interests in PRS, a partnership, for PRS's entire 2010 taxable year. In 2010, PRS MPGE QPP within the United States and then sells the property to X for $6,000, its fair market value at the time of the sale. PRS's gross receipts of $6,000 qualify as DPGR. In 2010, X sells the QPP to customers for $10,000, incurring selling expenses of $2,000. Under this paragraph (h)(8), X is treated as having MPGE the QPP within the United States, and X's $10,000 of gross receipts qualify as DPGR ($6,000 of CGS and $2,000 of other selling expenses are subtracted from DPGR in determining X's QPAI). The results would be the same if PRS sold the property to Z rather than to X.

Example 3. Distribution. X and Y, both members of a single EAG, are the only partners in PRS, a partnership, for PRS's entire 2010 taxable year. In 2010, PRS MPGE QPP within the United States, incurring $600 of CGS, including $500 of W–2 wages (as defined in § 1.199–2(f)), and then distributes the QPP to X. X's adjusted basis in the QPP is $600. At the time of the distribution the fair market value of the QPP is $1,000. X incurs $200 of directly allocable costs, including $100 of W–2 wages, to further MPGE the QPP within the United States. In 2010, X sells the QPP for $1,500 to a customer. Under paragraph (h)(8)(i) of this section, X is treated as having MPGE the QPP within the United States, and X's $1,500 of gross receipts qualify as DPGR. X subtracts from the $1,500 of DPGR the $600 of CGS incurred by PRS and the $200 of direct costs incurred by X. Thus, X's QPAI is $700 for 2010. In addition, PRS is treated as having DPGR of $1,000 solely for purposes of applying the wage limitation of section 199(d)(1)(B)(ii). Accordingly, X's share of PRS'S W–2 wages determined under section 199(d)(1)(B) is $72, the lesser of $500 (X's allocable share of PRS'S W–2 wages included in CGS) and $72 (2 x ($400 ($1,000 deemed DPGR less $600 of CGS) x .09)). X adds the $72 of PRS W–2 wages to its $100 of W–2 wages incurred in MPGE the QPP for purposes of section 199(b).

Example 4. Multiple sales. X and Y, both non-consolidated members of a single EAG, are the only partners in PRS, a partnership, for PRS's entire 2010 taxable year. PRS produces in bulk form in the United States the active ingredient for a pharmaceutical product. Assume that PRS's own MPGE activity with respect to the active ingredient is not substantial in nature, taking into account all of the facts and circumstances, and PRS's conversion costs to MPGE the active ingredient within the United States are $15 and account for 15 percent of PRS's $100 CGS of the active ingredient. PRS sells the active ingredient in bulk form to X. X uses the active ingredient to produce the finished dosage form drug. Assume that X's own MPGE activity with respect to the drug is not substantial in nature, taking into account all of the facts and circumstances, and X's conversion costs to MPGE the drug within the United States are $12 and account for 10 percent of X's $120 CGS of the drug. X sells the drug in finished dosage to Y and Y sells the drug to customers. Y incurs $2 of conversion costs and Y's CGS in selling the drug to customers is $130. PRS's gross receipts from the sale of the active ingredient to X are non-DPGR because PRS's MPGE activity is not substantial in nature and PRS does not satisfy the safe harbor described in paragraph (f)(3) of this section because PRS's conversion costs account for less than 20 percent of PRS's CGS of the active ingredient. X's gross receipts from the sale of the drug to Y are DPGR because X is considered to have MPGE the drug in significant part in the United States pursuant to the safe harbor described in paragraph (f)(3) of this section because the $27 ($15 + $12) of conversion costs incurred by PRS and X equals or exceeds 20 percent of X's total CGS ($120) of the drug at the time the drug is sold to Y. Similarly, Y's gross receipts from the sale of the drug to customers are DPGR because Y is considered to have MPGE the drug in significant part in the United States pursuant to the safe harbor described in paragraph (f)(3) of this section because the $29 ($15 + $12 + $2) of conversion costs incurred by PRS, X, and Y equals or exceeds 20 percent of Y's total CGS ($130) of the drug at the time the drug is sold to customers.

(9) *Non-operating mineral interests.* DPGR does not include gross receipts derived from mineral interests other than operating mineral interests within the meaning of § 1.614–2(b).

(i) *Definition of qualifying production property*—(1) *In general. QPP* means—

(i) Tangible personal property (as defined in paragraph (i)(2) of this section);

(ii) Computer software (as defined in paragraph (i)(3) of this section); and

(iii) Sound recordings (as defined in paragraph (i)(4) of this section).

(2) *Tangible personal property*—(i) *In general.* The term *tangible personal property* is any tangible property other than land, buildings (including items that are structural components of such buildings), and any property described in paragraph (i)(3), (i)(4), (j)(1), or (k) of this section. Property such as production machinery, printing presses, transportation and office equipment, refrigerators, grocery counters, testing equipment, display racks and shelves,

and neon and other signs that are contained in or attached to a building constitutes tangible personal property for purposes of this paragraph (i)(2)(i). Except as provided in paragraphs (i)(5)(ii) and (j)(2)(i) of this section, computer software, sound recordings, and qualified films are not treated as tangible personal property regardless of whether they are fixed on a tangible medium. However, the tangible medium on which such property may be fixed (for example, a videocassette, a computer diskette, or other similar tangible item) is tangible personal property.

(ii) *Local law.* In determining whether property is tangible personal property, local law is not controlling.

(iii) *Machinery.* Property that is in the nature of machinery (other than structural components of a building) is tangible personal property even if such property is located outside a building. Thus, for example, a gasoline pump, hydraulic car lift, or automatic vending machine, although annexed to the ground, is considered tangible personal property. A structure that is property in the nature of machinery or is essentially an item of machinery or equipment is not an inherently permanent structure and is tangible personal property. In the case, however, of a building or inherently permanent structure that includes property in the nature of machinery as a structural component, the property in the nature of machinery is real property.

(iv) *Intangible property.* The term *tangible personal property* does not include property in a form other than in a tangible medium. For example, mass-produced books are tangible personal property, but neither the rights to the underlying manuscript nor an online version of the book is tangible personal property.

(3) *Computer software*—(i) *In general.* The term *computer software* means any program or routine or any sequence of machine-readable code that is designed to cause a computer to perform a desired function or set of functions, and the documentation required to describe and maintain that program or routine. For purposes of this paragraph (i)(3), computer software also includes the machine-readable code for video games and similar programs, for equipment that is an integral part of other property, and for typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, regardless of whether the code is designed to operate on a computer (as defined in section 168(i)(2)(B)). Computer programs of all classes, for example, operating systems, executive systems, monitors, compilers and translators, assembly routines, and utility programs, as well as application programs, are included. Except as provided in paragraph (i)(5) of this section, if the medium in which the software is contained, whether written, magnetic, or otherwise, is tangible, then such medium is considered tangible personal property for purposes of this section.

(ii) *Incidental and ancillary rights.* Computer software also includes any incidental and ancillary rights that are necessary to effect the acquisition of the title to, the ownership of, or the right to use the computer software, and that are used only in connection with that specific computer software. Such incidental and ancillary rights are not included in the definition of trademark or trade name under § 1.197–2(b)(10)(i). For example, a trademark or trade name that is ancillary to the ownership or use of a specific computer software program in the taxpayer's trade or business and is not acquired for the purpose of marketing the computer software is included in the definition of computer software and is not included in the definition of trademark or trade name.

(iii) *Exceptions.* Computer software does not include any data or information base unless the data or information base is in the public domain and is incidental to a computer program. For this purpose, a copyrighted or proprietary data or information base is treated as in the public domain if its availability through the computer program does not contribute significantly to the cost of the program. For example, if a word-processing program includes a dictionary feature that may be used to spell-check a document or any portion thereof, the entire program (including the dictionary feature) is computer software regardless of the form in which the dictionary feature is maintained or stored.

(4) *Sound recordings*—(i) *In general.* The term *sound recordings* means any works that result from the fixation of a series of musical, spoken, or other sounds under section 168(f)(4). The definition of sound recordings is limited to the master copy of the recordings (or other copy from which the holder is licensed to make and produce copies), and, except as provided in paragraph (i)(5) of this section, if the medium (such as compact discs, tapes, or other phonorecordings) in which the sounds may be embodied is tangible, the medium is considered tangible personal property for purposes of paragraph (i)(2) of this section.

(ii) *Exception.* The term *sound recordings* does not include the creation of copyrighted material in a form other than a sound recording, such as lyrics or music composition.

(5) *Tangible personal property with computer software or sound recordings*—(i) *Computer software and sound recordings.* If a taxpayer MPGE computer software or sound recordings that is fixed on, or added to, tangible personal property by the taxpayer (for example, a computer diskette, or an appliance), then for purposes of this section—

(A) The computer software and the tangible personal property may be treated by the taxpayer as computer software. If the taxpayer treats the tangible personal property as computer software under this paragraph (i)(5)(i)(A), any costs under section 174 attributable to the tangible personal property are not considered in determining whether the taxpayer's activity is substantial in nature under paragraph (f)(2) of this section and are not conversion costs under paragraph (f)(3) of this section; and

(B) The sound recordings and the tangible personal property with the sound recordings may be treated by the taxpayer as sound recordings. If the taxpayer treats the tangible personal property as sound recordings under this paragraph (i)(5)(i)(B), any costs under section 174 attributable to the tangible personal property are not considered in determining whether the taxpayer's activity is substantial in nature under paragraph (f)(2) of this section and are not conversion costs under paragraph (f)(3) of this section.

(ii) *Tangible personal property.* If a taxpayer MPGE tangible personal property but not the computer software or sound recordings that the taxpayer fixes on, or adds to, the tangible personal property MPGE by the taxpayer (for example, a computer diskette or an appliance), then for purposes of this section the tangible personal property with the computer software or sound recordings may be treated by the taxpayer as tangible personal property under paragraph (i)(2) of this section. For purposes of paragraph (f)(3) of this section, the taxpayer's CGS for each item includes the taxpayer's cost of licensing the computer software or sound recordings.

(j) *Definition of qualified film*—(1) *In general.* The term *qualified film* means any motion picture film or video tape under section 168(f)(3), or live or delayed television programming if not less than 50 percent of the total compensation paid to all actors, production personnel, directors, and

producers relating to the production of the motion picture film, video tape, or television programming is compensation for services performed in the United States by those individuals. The term *production personnel* includes writers, choreographers and composers providing services during the production of a film, casting agents, camera operators, set designers, lighting technicians, make-up artists, and others whose activities are directly related to the production of the film. The term *production personnel* does not include, however, individuals whose activities are ancillary to the production, such as advertisers and promoters, distributors, studio administrators and managers, studio security personnel, and personal assistants to actors. The term *production personnel* also does not include individuals whose activities relate to fixing the film on tangible personal property. The definition of *qualified film* is limited to the master copy of the film (or other copy from which the holder is licensed to make and produce copies), and, except as provided in paragraph (j)(2) of this section, does not include tangible personal property embodying the qualified film, such as DVDs or videocassettes.

(2) *Tangible personal property with a film*—(i) *Film licensed to a taxpayer.* If a taxpayer MPGE tangible personal property (such as a DVD) in whole or in significant part in the United States and fixes to the tangible personal property a film that the taxpayer licenses from the producer of the film, then the taxpayer may treat the tangible personal property with the affixed film as QPP, regardless of whether the film is a qualified film. The determination of whether gross receipts of such a taxpayer from the lease, rental, license, sale, exchange, or other disposition of the tangible personal property with the affixed film are DPGR is made under the rules of paragraphs (d), (e), and (f) of this section. For purposes of paragraph (f)(3) of this section, the taxpayer's CGS for each item includes the taxpayer's cost of licensing the film from the producer of the film.

(ii) *Film produced by a taxpayer.* If a taxpayer produces a film and also fixes the film on tangible personal property (for example, a DVD), then for purposes of this section—

(A) *Qualified films.* If the film is a qualified film, the taxpayer may treat the tangible personal property on which the qualified film is fixed as part of the qualified film, in which case the gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the tangible personal property with the affixed qualified film will be DPGR (assuming all the other requirements of this section are met), regardless of whether the taxpayer MPGE the tangible personal property in whole or in significant part within the United States; and

(B) *Nonqualified films.* If the film is not a qualified film (nonqualified film), any gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the tangible personal property with the nonqualified film that are allocable to the nonqualified film are non-DPGR. The taxpayer, however, may treat the tangible personal property (without the nonqualified film) as an item of QPP. Thus, the determination of whether gross receipts of such a taxpayer derived from the lease, rental, license, sale, exchange, or other disposition of the tangible personal property with the affixed nonqualified film, that are allocable to the tangible personal property, are DPGR is made under the rules of paragraphs (d), (e), and (f) of this section.

(3) *Derived from a qualified film.* DPGR includes the gross receipts of the taxpayer which are derived from any lease, rental, license, sale, exchange, or other disposition of any qualified film produced by the taxpayer. Showing a qualified film on a television station is not a lease, rental, license, sale, exchange, or other disposition of the qualified film. Ticket sales for viewing qualified films do not constitute DPGR because the gross receipts are not derived from the lease, rental, license, sale, exchange, or other disposition of a qualified film. Because a taxpayer that merely writes a screenplay or other similar material is not considered to have produced a qualified film under paragraph (j)(1) of this section, the amounts that the taxpayer receives from the sale of the script or screenplay, even if the script is developed into a qualified film, are not gross receipts derived from a qualified film. In addition, revenue from the sale of film-themed merchandise is revenue from the sale of tangible personal property and not gross receipts derived from a qualified film. Gross receipts derived from a license of the right to use the film characters are not gross receipts derived from a qualified film.

(4) *Examples.* The following examples illustrate the application of paragraphs (j)(2) and (3) of this section:

Example 1. X produces a qualified film in the United States and duplicates the film onto purchased DVDs. X sells the DVDs with the qualified film to customers. Under paragraph (j)(2)(ii)(A) of this section, X may treat the DVD with the qualified film as a qualified film. Accordingly, X's gross receipts derived from the sale of the qualified film to customers are DPGR (assuming all the other requirements of this section are met).

Example 2. The facts are the same as in *Example 1* except that the film is a nonqualified film because the film does not satisfy the 50 percent requirement under (j)(1) of this section and X manufactures the DVDs in the United States. Under paragraph (j)(2)(ii)(B) of this section, X may treat the DVD without the nonqualified film as tangible personal property. X's gross receipts (not including the gross receipts attributable to the nonqualified film) derived from the sale of the tangible personal property are DPGR (assuming all the other requirements of this section are met).

Example 3. X produces television programs that are qualified films. X shows the programs on its own television station. X sells advertising time slots to advertisers for the television programs. Because showing qualified films on a television station is not a lease, rental, license, sale, exchange, or other disposition, pursuant to paragraph (j)(3) of this section, the advertising income X receives from advertisers is not derived from the lease, rental, license, sale, exchange, or other disposition of qualified films.

Example 4. X produces a qualified film and contracts with Y, an unrelated taxpayer, to duplicate the film onto DVDs. Y manufactures blank DVDs within the United States, duplicates X's film onto the DVDs in the United States, and sells the DVDs with the qualified film to X who then sells them to customers. Y has all of the benefits and burdens of ownership under Federal income tax principles of the DVDs during the MPGE and duplication process. Assume Y's activities relating to manufacture of the blank DVDs and duplicating the film onto the DVDs collectively satisfy the safe harbor under paragraph (f)(3) of this section. Y's gross receipts from manufacturing the DVDs and duplicating the film onto the DVDs are DPGR. X's gross receipts from the sale of the DVDs to customers are DPGR.

(5) *Compensation for services.* The term *compensation for services* means all payments for services performed by actors, production personnel, directors, and producers, including participations and residuals. In the case of a taxpayer that uses the income forecast method of section 167(g) and capitalizes participations and residuals into the adjusted basis of the qualified film, the taxpayer must use the same estimate of participations and residuals for services performed by actors, production personnel, directors, and producers for purposes of this section. In the case of a taxpayer that excludes participations and residuals from the adjusted basis of the qualified film under section 167(g)(7)(D)(i), the taxpayer must determine the compensation expected to be paid for services performed by actors, production personnel, directors, and producers as participations and residuals based on the total forecasted income used in determining income

forecast depreciation. Compensation for services includes all direct and indirect compensation costs required to be capitalized under section 263A for film producers under § 1.263A–1(e)(2) and (3). Compensation for services is not limited to W–2 wages and includes compensation paid to independent contractors.

(6) *Determination of 50 percent.* A taxpayer may use any reasonable method of determining the compensation for services performed in the United States by actors, production personnel, directors, and producers, and the total compensation paid to those individuals for services relating to the production of the property. Among the factors to be considered in determining whether a taxpayer's method of allocating compensation is reasonable is whether the taxpayer uses that method consistently.

(7) *Exception.* A *qualified film* does not include property with respect to which records are required to be maintained under 18 U.S.C. 2257. Section 2257 of Title 18 requires maintenance of certain records with respect to any book, magazine, periodical, film, videotape, or other matter that—

(i) Contains one or more visual depictions made after November 1, 1990, of actual sexually explicit conduct; and

(ii) Is produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce.

(k) *Electricity, natural gas, or potable water*—(1) *In general.* DPGR includes gross receipts derived from any lease, rental, license, sale, exchange, or other disposition of utilities produced by the taxpayer in the United States if all other requirements of this section are met. In the case of an integrated producer that both produces and delivers utilities, see paragraph (k)(4) of this section that describes certain gross receipts that do not qualify as DPGR, therefore requiring a taxpayer to allocate its gross receipts between DPGR and non-DPGR.

(2) *Natural gas.* The term *natural gas* includes only natural gas extracted from a natural deposit and does not include, for example, methane gas extracted from a landfill. In the case of natural gas, production activities include all activities involved in extracting natural gas from the ground and processing the gas into pipeline quality gas.

(3) *Potable water.* The term *potable water* means unbottled drinking water. In the case of potable water, production activities include the acquisition, collection, and storage of raw water (untreated water), transportation of raw water to a water treatment facility, and treatment of raw water at such a facility. Gross receipts attributable to any of these activities are included in DPGR if all other requirements of this section are met.

(4) *Exceptions*—(i) *Electricity.* Gross receipts attributable to the transmission of electricity from the generating facility to a point of local distribution and gross receipts attributable to the distribution of electricity to final customers are non-DPGR.

(ii) *Natural gas.* Gross receipts attributable to the transmission of pipeline quality gas from a natural gas field (or, if treatment at a natural gas processing plant is necessary to produce pipeline quality gas, from a natural gas processing plant) to a local distribution company's citygate (or to another customer) are non-DPGR. Likewise, gross receipts of a local gas distribution company attributable to distribution from the citygate to the local customers are non-DPGR.

(iii) *Potable water.* Gross receipts attributable to the storage of potable water after completion of treatment of the potable water, as well as gross receipts attributable to the transmission and distribution of potable water, are non-DPGR.

(iv) *De minimis exception.* Notwithstanding paragraphs (k)(4)(i), (ii), and (iii) of this section, if less than 5 percent of a taxpayer's gross receipts derived from a sale, exchange, or other disposition of utilities are attributable to the transmission or distribution of the utilities, then the gross receipts derived from that lease, rental, license, sale, exchange, or other disposition that are attributable to the transmission and distribution of the utilities must be treated for purposes of section 199 as being DPGR if all other requirements of this section are met.

(5) *Example.* The following example illustrates the application of this paragraph (k):

Example. X owns a wind turbine in the United States that generates electricity and Y owns a high voltage transmission line that passes near X's wind turbine and ends near the system of local distribution lines of Z. X sells the electricity produced at the wind turbine to Z and contracts with Y to transmit the electricity produced at the wind turbine to Z who sells the electricity to customers using Z's distribution network. The gross receipts received by X for the sale of electricity produced at the wind turbine are DPGR. The gross receipts of Y from transporting X's electricity to Z are non-DPGR under paragraph (k)(4)(i) of this section. Likewise, the gross receipts of Z from distributing the electricity are non-DPGR under paragraph (k)(4)(i) of this section. If X made direct sales of electricity to customers in Z's service area and Z receives remuneration for the distribution of electricity, the gross receipts of Z are non-DPGR under paragraph (k)(4)(i) of this section. If X, Y, and Z are related persons (as defined in paragraph (b) of this section), then X, Y, and Z must allocate gross receipts to production activities, transmission activities, and distribution activities.

(l) *Definition of construction performed in the United States*—(1) *Construction of real property*—(i) *In general.* The term *construction* means the construction or erection of real property (that is, residential and commercial buildings (including items that are structural components of such buildings), inherently permanent structures other than tangible personal property in the nature of machinery (see paragraph (i)(2)(iii) of this section), inherently permanent land improvements, oil and gas wells, and infrastructure) in the United States by a taxpayer that, at the time the taxpayer constructs the real property, is engaged in a trade or business (but not necessarily its primary, or only, trade or business) that is considered construction for purposes of the North American Industry Classification System (NAICS) on a regular and ongoing basis. A trade or business that is considered construction under the NAICS means a construction activity under the two-digit NAICS code of 23 and any other construction activity in any other NAICS code provided the construction activity relates to the construction of real property such as NAICS code 213111 (drilling oil and gas wells) and 213112 (support activities for oil and gas operations). Tangible personal property (for example, appliances, furniture, and fixtures) that is sold as part of a construction project is not considered real property for purposes of this paragraph (l)(1)(i). In determining whether property is real property, the fact that property is real property under local law is not controlling. Conversely, property may be real property for purposes of this paragraph (l)(1)(i) even though under local law the property is considered tangible personal property.

(ii) *De minimis exception.* For purposes of paragraph (l)(1)(i) of this section, if less than 5 percent of the total gross receipts derived by a taxpayer from a construction project (as described in paragraph (l)(1)(i) of this section) are derived from activities other than the construction of real property in the United States (for example, from non-construction activities or the sale of

tangible personal property or land) then the total gross receipts derived by the taxpayer from the project are DPGR from construction.

(2) *Activities constituting construction.* Activities constituting construction include activities performed in connection with a project to erect or substantially renovate real property, but do not include tangential services such as hauling trash and debris, and delivering materials, even if the tangential services are essential for construction. However, if the taxpayer performing construction also, in connection with the construction project, provides tangential services such as delivering materials to the construction site and removing its construction debris, the gross receipts derived from the tangential services are DPGR. Improvements to land that are not capitalizable to the land (for example, landscaping) and painting are activities constituting construction only if these activities are performed in connection with other activities (whether or not by the same taxpayer) that constitute the erection or substantial renovation of real property and provided the taxpayer meets the requirements under paragraph (l)(1) of this section. The taxpayer engaged in these activities must make a reasonable inquiry to determine whether the activity relates to the erection or substantial renovation of real property in the United States. Construction activities also include activities relating to drilling an oil well and mining and include any activities pursuant to which the taxpayer could deduct intangible drilling and development costs under section 263(c) and § 1.612–4 and development expenditures for a mine or natural deposit under section 616. The lease, license, or rental of equipment, for example, bulldozers, generators, or computers, to contractors for use by the contractors in the construction of real property is not a construction activity under this paragraph (l)(2). The term *construction* does not include any activity that is within the definition of engineering and architectural services under paragraph (m) of this section.

(3) *Definition of infrastructure.* The term *infrastructure* includes roads, power lines, water systems, railroad spurs, communications facilities, sewers, sidewalks, cable, and wiring. The term also includes inherently permanent oil and gas platforms.

(4) *Definition of substantial renovation.* The term *substantial renovation* means the renovation of a major component or substantial structural part of real property that materially increases the value of the property, substantially prolongs the useful life of the property, or adapts the property to a new or different use.

(5) *Derived from construction*—(i) *In general.* Assuming all the requirements of this section are met, DPGR derived from the construction of real property performed in the United States includes the proceeds from the sale, exchange, or other disposition of real property constructed by the taxpayer in the United States (whether or not the property is sold immediately after construction is completed and whether or not the construction project is complete). DPGR derived from the construction of real property includes compensation for the performance of construction services by the taxpayer in the United States. However, DPGR derived from the construction of real property does not include gross receipts from the lease or rental of real property constructed by the taxpayer or, except as provided in paragraph (l)(5)(ii) of this section, gross receipts attributable to the sale or other disposition of land (including zoning, planning, entitlement costs, and other costs capitalized to the land such as the demolition of structures under section 280B). In addition, DPGR derived from the construction of real property includes gross receipts from any qualified construction warranty, that is, a warranty that is provided in connection with the constructed real property if—

(A) In the normal course of the taxpayer's business, the price for the construction warranty is not separately stated from the amount charged for the constructed real property; and

(B) The construction warranty is neither separately offered by the taxpayer nor separately bargained for with the customer (that is, the customer cannot purchase the constructed real property without the construction warranty).

(ii) *Land safe harbor.* For purposes of paragraph (l)(5)(i) of this section, a taxpayer may allocate gross receipts between the proceeds from the sale, exchange, or other disposition of real property constructed by the taxpayer and the gross receipts attributable to the sale, exchange, or other disposition of land by reducing its costs related to DPGR under § 1.199–4 by costs of the land and any other costs capitalized to the land (collectively, land costs) (including zoning, planning, entitlement costs, and other costs capitalized to the land such as the demolition of structures under section 280B and land costs in any common improvements as defined in section 2.01 of Rev. Proc. 92–29 (1992–1 C.B. 748) (see § 601.601(d)(2) of this chapter)) and by reducing its DPGR by those land costs plus a percentage. The percentage is based on the number of years that elapse between the date the taxpayer acquires the land, including the date the taxpayer enters into the first option to acquire all or a portion of the land, and ends on the date the taxpayer sells each item of real property on the land. The percentage is 5 percent for years zero through 5; 10 percent for years 6 through 10; and 15 percent for years 11 through 15. Land held by a taxpayer for 16 or more years is not eligible for the safe harbor under this paragraph (l)(5)(ii) and the taxpayer must allocate gross receipts between land and qualifying real property.

(iii) *Examples.* The following examples illustrate the application of this paragraph (l)(5):

Example 1. X, who is in the trade or business of construction under NAICS code 23 on a regular and ongoing basis, purchases a building in the United States and retains Y, an unrelated taxpayer (a general contractor), to oversee a substantial renovation of the building (within the meaning of paragraph (l)(4) of this section). Y retains Z (a subcontractor) to install a new electrical system in the building as part of that substantial renovation. The amounts that Y receives from X for construction services, and amounts that Z receives from Y for construction services, qualify as DPGR under paragraph (l)(5)(i) of this section provided Y and Z meet all of the requirements of paragraph (l)(1) of this section. The gross receipts that X receives from the subsequent sale of the building do not qualify as DPGR because X did not engage in any activity constituting construction under paragraph (l)(2) of this section even though X is in the trade or business of construction. The results would be the same if X and Y were members of the same EAG under § 1.199–7(a). However, if X and Y were members of the same consolidated group, see § 1.199–7(d)(2).

Example 2. X is engaged as an electrical contractor under NAICS code 238210 on a regular and ongoing basis. X purchases the wires, conduits, and other electrical materials that it installs in construction projects in the United States. In a particular construction project, all of the wires, conduits, and other electrical materials installed by X for the operation of that building are considered structural components of the building. X's gross receipts derived from installing that property are derived from the construction of real property under paragraph (l)(1) of this section. However, X's gross receipts derived from the purchased materials do not qualify as DPGR.

Example 3. X is in a trade or business that is considered construction under the two-digit NAICS code of 23. X buys unimproved land. X gets the land zoned for residential housing through an entitlement process. X grades the land and sells the land to home builders. The gross receipts that X receives from the sale of the land do not qualify as DPGR under paragraph (l)(5)(i) of this section because the gross receipts are not derived from the construction of real property.

Example 4. The facts are the same as in *Example 3* except that X builds roads, sewers, sidewalks, and installs power and water lines on the land. The gross receipts that X receives that are attributable to the sale of the roads, sewers, sidewalks, and power and water lines, which qualify as infrastructure under paragraph (l)(3) of this section, are DPGR. X's gross receipts from the land including capitalized costs of entitlements do not qualify as DPGR under paragraph (l)(5)(i) of this section because the gross receipts are not derived from the construction of real property.

Example 5. (i) X is engaged in the business activities of constructing housing within the meaning of paragraph (l)(1) of this section. On June 1, 2005, X pays $50,000,000 for 1,000 acres of land that X will develop as a new housing development. In 2008, after the expenditure of $10,000,000 for entitlement costs, X receives permits to begin construction. After this expenditure, X's land costs total $60,000,000. The development consists of 1,000 houses to be built on half-acre lots over 5 years. On January 31, 2010, the first house is sold for $300,000. Construction costs for each house are $170,000. Common improvements consisting of streets, sidewalks, sewer lines, playgrounds, clubhouses, tennis courts, and swimming pools that X is contractually obligated or required by law to provide cost $55,000 per lot. The common improvements include $30,000 in land costs underlying the common improvements.

(ii) Pursuant to the land safe harbor under paragraph (l)(5)(ii) of this section, X calculates the total costs under § 1.199–4 for each house sold in 2010 as $195,000 (total costs of $255,000 ($170,000 in construction costs plus $55,000 in common improvements (including $30,000 in land costs) plus $30,000 in land costs for the lot), which are reduced by land costs of $60,000). X calculates the DPGR for each house sold by May 31, 2010, by taking the gross receipts of $300,000 and reducing that amount by land costs of $60,000 plus a percentage of $60,000. As X acquired the land on June 1, 2005, and sold the houses on the land between January 31, 2010, and May 31, 2010, the percentage reduction for X is 5 percent because X has held the land for not more than 5 years from the anniversary of the date of acquisition. Thus, the DPGR for each house is $237,000 ($300,000 − $60,000 − $3,000) with costs for each house of $195,000 for a calculation of QPAI for each house of $42,000.

Example 6. The facts are the same as in *Example 5* except some of the houses are sold between June 1, 2010, and December 31, 2010. X calculates the DPGR for each house sold between June 1, 2010, and December 31, 2010, by taking the gross receipts of $300,000 and reducing that amount by land costs of $60,000 plus a percentage of $60,000. As X acquired the land on June 1, 2005, and sold the houses on the land between June 1, 2010, and December 31, 2010, the percentage reduction for X is 10 percent because X has held the land for more than 5 years but not more than 10 years from the anniversary of the date of acquisition. Thus, the DPGR for each house is $234,000 ($300,000 − $60,000 − $6,000) with costs for each house of $195,000 for a calculation of QPAI for each house of $39,000.

(m) *Definition of engineering and architectural services*—(1) *In general.* DPGR includes gross receipts derived from engineering or architectural services performed in the United States for a construction project described in paragraph (l) of this section. At the time the taxpayer performs the engineering or architectural services, the taxpayer must be engaged in a trade or business (but not necessarily its primary, or only, trade or business) that is considered engineering or architectural services for purposes of the NAICS, for example NAICS codes 541330 (engineering services) or 541310 (architectural services), on a regular and ongoing basis. DPGR includes gross receipts derived from engineering or architectural services, including feasibility studies for a construction project in the United States, even if the planned construction project is not undertaken or is not completed.

(2) *Engineering services.* Engineering services in connection with any construction project include any professional services requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, or engineering sciences to those professional services such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction for the purpose of assuring compliance with plans, specifications, and design.

(3) *Architectural services.* Architectural services in connection with any construction project include the offering or furnishing of any professional services such as consultation, planning, aesthetic and structural design, drawings and specifications, or responsible supervision of construction (for the purpose of assuring compliance with plans, specifications, and design) or erection, in connection with any construction project.

(4) *De minimis exception for performance of services in the United States.* If less than 5 percent of the total gross receipts derived by a taxpayer from engineering or architectural services performed in the United States for a construction project (described in paragraph (l) of this section) are derived from services not relating to a construction project described in paragraph (l) of this section (for example, the services are performed outside the United States or in connection with property other than real property) then the total gross receipts derived by the taxpayer are DPGR from engineering or architectural services performed in the United States for a construction project.

(n) *Exception for sales of certain food and beverages*—(1) *In general.* DPGR does not include gross receipts of the taxpayer that are derived from the sale of food or beverages prepared by the taxpayer at a retail establishment. A *retail establishment* is defined as tangible property (both real and personal) leased, occupied, or otherwise used by the taxpayer in its trade or business of selling food or beverages to the public at which retail sales are made. In addition, a facility that prepares food and beverages solely for take out service or delivery is a retail establishment (for example, a caterer). A facility at which food or beverages are prepared will not be treated as a retail establishment if less than 5 percent of the gross receipts from the sale of food or beverages at that facility during the taxable year are attributable to retail sales. If a taxpayer's facility is a retail establishment in the United States, then, for purposes of this section, the taxpayer may allocate its gross receipts between gross receipts derived from the retail sale of the food and beverages prepared and sold at the retail establishment (which are non-DPGR) and gross receipts derived from the wholesale sale of the food and beverages prepared at the retail establishment (which are DPGR). Wholesale sales are sales of food and beverages to be resold by the purchaser. The exception for sales of certain food and beverages also applies to food and beverages for non-human consumption. A *retail establishment* does not include the bonded premises of a distilled spirits plant or wine cellar, or the premises of a brewery (other than a tavern on the brewery premises). See Chapter 51 of Title 26 of the United States Code and the implementing regulations thereunder.

(2) *Examples.* The following examples illustrate the application of this paragraph (n):

Example 1. X buys coffee beans and roasts those beans at a facility in the United States, the only activity of which is the roasting and packaging of roasted coffee beans. X sells the roasted coffee beans through a variety of unrelated third-party vendors and also sells roasted coffee beans at X's retail establishments. At X's retail establishments, X prepares brewed coffee and other foods. To the extent that the gross receipts of X's retail

establishments represent receipts from the sale of coffee beans roasted at the facility, the receipts are DPGR. To the extent the gross receipts of X's retail establishments represent receipts from the retail sale of brewed coffee or food prepared at the retail establishments, the receipts are non-DPGR. However, pursuant to § 1.199–1(c)(2), X must allocate part of the receipts from the retail sale of the brewed coffee as DPGR to the extent of the value of the coffee beans that were roasted at the facility and that were used to brew coffee.

Example 2. Y operates a bonded winery in California. Bottles of wine produced by Y at the bonded winery are sold to consumers at the taxpaid premises. Pursuant to paragraph (n)(1) of this section, the bonded premises is not considered a retail establishment and is treated as separate and apart from the taxpaid premises, which is considered a retail establishment for purposes of paragraph (n)(1) of this section. Accordingly, the wine produced by Y in the bonded premises and sold by Y from the taxpaid premises is not considered to have been produced at a retail establishment, and the sales of the wine are DPGR (assuming all the other requirements of this section are met).

§ 1.199–4 Costs allocable to domestic production gross receipts.

(a) *In general.* To determine its qualified production activities income (QPAI) (as defined in § 1.199–1(c)) for a taxable year, a taxpayer must subtract from its domestic production gross receipts (DPGR) (as defined in § 1.199–3(a)) the cost of goods sold (CGS) allocable to DPGR, the amount of expenses or losses (deductions) directly allocable to DPGR, and a ratable portion of other deductions not directly allocable to DPGR or to another class of income. Paragraph (b) of this section provides rules for determining CGS allocable to DPGR. Paragraph (c) of this section provides rules for determining the deductions allocated and apportioned to DPGR and a ratable portion of deductions that are not directly allocable to DPGR or to another class of income. Paragraph (d) of this section provides that a taxpayer generally must determine deductions allocated and apportioned to DPGR or to gross income attributable to DPGR using the rules of the regulations at §§ 1.861–8 through 1.861–17 and §§ 1.861–8T through 1.861–14T (the section 861 regulations), subject to the rules in paragraph (d) of this section (the section 861 method). Paragraph (e) of this section provides that certain taxpayers may apportion deductions to DPGR using the simplified deduction method. Paragraph (f) of this section provides a small business simplified overall method that a qualifying small taxpayer may use to apportion CGS and deductions to DPGR.

(b) *Cost of goods sold allocable to domestic production gross receipts*—(1) *In general.* When determining its QPAI, a taxpayer must reduce DPGR by the CGS allocable to DPGR. A taxpayer determines its CGS allocable to DPGR in accordance with this paragraph (b) or, if applicable, paragraph (f) of this section. In the case of a sale, exchange, or other disposition of inventory, CGS is equal to beginning inventory plus purchases and production costs incurred during the taxable year and included in inventory costs, less ending inventory. CGS is determined under the methods of accounting that the taxpayer uses to compute taxable income. See sections 263A, 471, and 472. Additional section 263A costs, as defined in § 1.263A–1(d)(3), must be included in determining CGS. In the case of a sale, exchange, or other disposition (including, for example, theft, casualty, or abandonment) of non-inventory property, CGS for purposes of this section includes the adjusted basis of the property. CGS allocable to DPGR for a taxable year may include the inventory cost and adjusted basis of qualifying production property (QPP) (as defined in § 1.199–3(i)(1)), a qualified film (as defined in § 1.199–3(j)(1)), or electricity, natural gas, and potable water (as defined in § 1.199–3(k)) (collectively, utilities) that will, or have, generated DPGR notwithstanding that the gross receipts attributable to the sale of the QPP, qualified films, or utilities will, or have been, included in the computation of gross income for a different taxable year. For example, advance payments related to DPGR may be included in gross income under § 1.451–5(b)(1)(i) in a different taxable year than the related CGS allocable to that DPGR. CGS allocable to DPGR includes inventory valuation adjustments such as writedowns under the lower of cost or market method. If non-DPGR is treated as DPGR pursuant to §§ 1.199–1(d)(2) and 1.199–3(h)(4), (k)(4)(iv), (l)(1)(ii), (m)(4), or (n)(1), CGS related to such gross receipts that are treated as DPGR must be allocated or apportioned to DPGR.

(2) *Allocating cost of goods sold.* A taxpayer must use a reasonable method that is satisfactory to the Secretary to allocate CGS between DPGR and non-DPGR. Whether an allocation method is reasonable is based on all of the facts and circumstances including whether the taxpayer uses the most accurate information available; the relationship between CGS and the method used; the accuracy of the method chosen as compared with other possible methods; whether the method is used by the taxpayer for internal management and other business purposes; whether the method is used for other Federal or state income tax purposes; the availability of costing information; the time, burden, and cost of using various methods; and whether the taxpayer applies the method consistently from year to year. If a taxpayer does, or can, without undue burden or expense, specifically identify from its books and records CGS allocable to DPGR, the CGS allocable to DPGR is that amount irrespective of whether the taxpayer uses another allocation method to allocate gross receipts between DPGR and non-DPGR. A taxpayer that cannot, without undue burden or expense, use a specific identification method to determine CGS allocable to DPGR is not required to use a specific identification method to determine CGS allocable to DPGR. Ordinarily, if a taxpayer uses a method to allocate gross receipts between DPGR and non-DPGR, the use of a different method to allocate CGS that is not demonstrably more accurate than the method used to allocate gross receipts will not be considered reasonable. Depending on the facts and circumstances, reasonable methods may include methods based on gross receipts, number of units sold, number of units produced, or total production costs.

(3) *Special rules for imported items or services.* The cost of any item or service brought into the United States (as defined in § 1.199–3(g)) without an arm's length transfer price may not be treated as less than its value immediately after it entered the United States for purposes of determining the CGS to be used in the computation of QPAI. When an item or service is imported into the United States that had been exported by the taxpayer for further manufacture, the increase in cost may not exceed the difference between the value of the property when exported and the value of the property when imported back into the United States after further manufacture. For this purpose, the value of property is its customs value as defined in section 1059A(b)(1).

(4) *Rules for inventories valued at market or bona fide selling prices.* If part of CGS is attributable to inventory valuation adjustments, CGS allocable to DPGR includes inventory adjustments to QPP that is MPGE in whole or in significant part within the United States, qualified films produced in the United States, or utilities produced in the United States. Accordingly, taxpayers that value inventory under § 1.471–4 (inventories at cost or market, whichever is lower) or § 1.471–2(c)

(subnormal goods at bona fide selling prices) must allocate a proper share of such adjustments (for example, writedowns) to DPGR based on a reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances. Factors taken into account in determining whether the method is reasonable include whether the taxpayer uses the most accurate information available; the relationship between the adjustment and the allocation base chosen; the accuracy of the method chosen as compared with other possible methods; whether the method is used by the taxpayer for internal management or other business purposes; whether the method is used for other Federal or state income tax purposes; the time, burden, and cost of using various methods; and whether the taxpayer applies the method consistently from year to year. If a taxpayer does, or can, without undue burden or expense, specifically identify from its books and records the proper amount of inventory valuation adjustments allocable to DPGR, then the taxpayer must allocate that amount to DPGR. A taxpayer that cannot, without undue burden or expense, use a specific identification method to determine the proper amount of inventory valuation adjustments allocable to DPGR is not required to use a specific identification method to allocate adjustments to DPGR.

(5) *Rules applicable to inventories accounted for under the last-in, first-out (LIFO) inventory method*—(i) *In general.* This paragraph applies to inventories accounted for using the specific goods last-in, first-out (LIFO) method or the dollar-value LIFO method. Whenever a specific goods grouping or a dollar-value pool contains QPP, qualified films, or utilities that produces DPGR and goods that do not, the taxpayer must allocate CGS attributable to that grouping or pool between DPGR and non-DPGR using a reasonable method. Whether a method of allocating CGS between DPGR and non-DPGR is reasonable must be determined in accordance with paragraph (b)(2) of this section. In addition, this paragraph (b)(5) provides methods that a taxpayer may use to allocate CGS for inventories accounted for using the LIFO method. If a taxpayer uses the LIFO/FIFO ratio method provided in paragraph (b)(5)(ii) of this section or the change in relative base-year cost method provided in paragraph (b)(5)(iii) of this section, the taxpayer must use that method for all inventory accounted for under the LIFO method.

(ii) *LIFO/FIFO ratio method.* A taxpayer using the specific goods LIFO method or the dollar-value LIFO method may use the LIFO/FIFO ratio method. The LIFO/FIFO ratio method is applied with respect to all LIFO inventory of a taxpayer on a grouping-by-grouping or pool-by-pool basis. Under the LIFO/FIFO ratio method, a taxpayer computes the CGS of a grouping or pool allocable to DPGR by multiplying the CGS of QPP, qualified films, or utilities in the grouping or pool that produced DPGR computed using the first-in, first-out (FIFO) method by the LIFO/FIFO ratio of the grouping or pool. The LIFO/FIFO ratio of a grouping or pool is equal to the total CGS of the grouping or pool computed using the LIFO method over the total CGS of the grouping or pool computed using the FIFO method.

(iii) *Change in relative base-year cost method.* A taxpayer using the dollar-value LIFO method may use the change in relative base-year cost method. The change in relative base-year cost method is applied with respect to all LIFO inventory of a taxpayer on a pool-by-pool basis. The change in relative base-year cost method determines the CGS allocable to DPGR by increasing or decreasing the total production costs (section 471 costs and additional section 263A costs) of QPP, qualified films, and utilities that generate DPGR by a portion of any increment or liquidation of the dollar-value pool. The portion of an increment or liquidation allocable to DPGR is determined by multiplying the LIFO value of the increment or liquidation (expressed as a positive number) by the ratio of the change in total base-year cost (expressed as a positive number) of the QPP, qualifying films, and utilities that will generate DPGR in ending inventory to the change in total base-year cost (expressed as a positive number) of all goods in the ending inventory. The portion of an increment or liquidation allocable to DPGR may be zero but cannot exceed the amount of the increment or liquidation. Thus, a ratio in excess of 1.0 must be treated as 1.0.

(6) *Taxpayers using the simplified production method or simplified resale method for additional section 263A costs.* A taxpayer that uses the simplified production method or simplified resale method to allocate additional section 263A costs, as defined in § 1.263A–1(d)(3), to ending inventory must follow the rules in paragraph (b)(2) of this section to determine the amount of additional section 263A costs allocable to DPGR. Allocable additional section 263A costs include additional section 263A costs included in beginning inventory as well as additional section 263A costs incurred during the taxable year. Ordinarily, if a taxpayer uses the simplified production method or the simplified resale method, then additional section 263A costs should be allocated in the same proportion as section 471 costs are allocated.

(7) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. Advance payments. T, a calendar year taxpayer, is a manufacturer of furniture in the United States. Under its method of accounting, T includes advance payments in gross income when the payments are received. In December 2005, T receives an advance payment of $5,000 from X with respect to an order of furniture to be manufactured for a total price of $20,000. In 2006, T produces and ships the furniture to X. In 2006, T incurs $14,000 of section 471 and additional section 263A costs to produce the furniture ordered by X. T receives the remaining $15,000 of the contract price from X in 2006. T must include the $5,000 advance payment in income and DPGR in 2005. The remaining $15,000 of the contract price must be included in income and DPGR when received by T in 2006. T must include the $14,000 it incurred to produce the furniture in CGS and CGS allocable to DPGR in 2006. See § 1.199–1(e)(1) for rules regarding gross receipts and costs recognized in different taxable years.

Example 2. Use of standard cost method. X, a calendar year taxpayer, manufactures item A in a factory located in the United States and item B in a factory located in Country Y. Item A is produced by X in significant part within the United States and the sale of A generates DPGR. X uses the FIFO inventory method to account for its inventory and determines the cost of item A using a standard cost method. At the beginning of its taxable year, X's inventory contains 2,000 units of item A at a standard cost of $5 per unit. X did not incur significant cost variances in previous taxable years. During the 2005 taxable year, X produces 8,000 units of item A at a standard cost of $6 per unit. X determines that with regard to its production of item A it has incurred a significant cost variance. When X reallocates the cost variance to the units of item A that it has produced, the production cost of item A is $7 per unit. X sells 7,000 units of item A during the taxable year. X can identify from its books and records that CGS related to sale of item A is $45,000 ((2,000 × $5) + (5,000 × $7)). Accordingly, X has CGS allocable to DPGR of $45,000.

Example 3. Change in relative base-year cost method. (i) Y elects, beginning with the calendar year 2005, to compute its inventories using the dollar-value, LIFO method under section 472. Y establishes a pool for items A and B. Y produces item A in significant part within the United States and the sales of item A generate DPGR. Y does not produce item B in significant part within the United States and the sale of item B does not generate DPGR. The composition of the inventory for the pool at the base date, January 1, 2005, is as follows:

Item	Unit	Unit cost	Total cost
A	2,000	$5.00	$10,000
B	1,250	4.00	5,000
Total			15,000

(ii) Y uses a standard cost method to allocate all direct and indirect costs (section 471 and additional section 263A costs) to the units of item A and item B that it produces. During 2005, Y incurs $52,500 of section 471 costs and additional section 263A costs to produce 10,000 units of item A and $114,000 of section 471 costs and additional section 263A costs to produce 20,000 units of item B.

(iii) The closing inventory of the pools at December 31, 2005, contains 3,000 units of item A and 2,500 units of item B. The closing inventory of the pool at December 31, 2005, shown at base-year and current-year cost is as follows:

Item	Quantity	Base-year cost	Amount	Current-year cost	Amount
A	3,000	$5.00	$15,000	$5.25	$15,750
B	2,500	4.00	10,000	5.70	14,250
Totals			25,000		30,000

(iv) The base-year cost of the closing LIFO inventory at December 31, 2005, amounts to $25,000, and exceeds the $15,000 base-year cost of the opening inventory for the taxable year by $10,000 (the increment stated at base-year cost). The increment valued at current-year cost is computed by multiplying the increment stated at base-year cost by the ratio of the current-year cost of the pool to total base-year cost of the pool (that is, $30,000/$25,000, or 120 percent). The increment stated at current-year cost is $12,000 ($10,000 × 120%).

(v) The change in relative base-year cost of item A is $5,000 ($15,000 − $10,000). The change in relative base-year cost (the increment stated at base-year cost) of the total inventory is $10,000 ($25,000 − $15,000). The ratio of the change in base-year cost of item A to the change in base-year cost of the total inventory is 50% ($5,000/$10,000).

(vi) CGS allocable to DPGR is $46,500, computed as follows:

Current-year production costs related to DPGR		$52,500
Less:		
Increment stated at current-year cost	$12,000	
Ratio	50%	
Total		(6,000)
Total		46,500

Example 4. Change in relative base-year cost method. (i) The facts are the same as in *Example 3* except that, during the calendar year 2006, Y experiences an inventory decrement. During 2006, Y incurs $66,000 of section 471 costs and additional section 263A costs to produce 12,000 units of item A and $150,000 of section 471 costs and additional section 263A costs to produce 25,000 units of item B.

(ii) The closing inventory of the pool at December 31, 2006, contains 2,000 units of item A and 2,500 units of item B. The closing inventory of the pool at December 31, 2006, shown at base-year and current-year cost is as follows:

Item	Quantity	Base-year cost	Amount	Current-year cost	Amount
A	2,000	$5.00	$10,000	$5.50	$11,000
B	2,500	4.00	10,000	6.00	15,000
Totals			20,000		26,000

(iii) The base-year cost of the closing LIFO inventory at December 31, 2006, amounts to $20,000, and is less than the $25,000 base-year cost of the opening inventory for that year by $5,000 (the decrement stated at base-year cost). This liquidation is reflected by reducing the most recent layer of increment. The LIFO value of the inventory at December 31, 2006 is:

	Base cost	Index	LIFO value
January 1, 2005, base cost	$15,000	1.00	$15,000
December 31, 2005, increment	5,000	1.20	6,000
Total			21,000

(iv) The change in relative base-year cost of item A is $5,000 ($15,000 − $10,000). The change in relative base-year cost of the total inventory is $5,000 ($25,000 − $20,000). The ratio of the change in base-year cost of item A to the change in base-year cost of the total inventory is 100% ($5,000/$5,000).

(v) CGS allocable to DPGR is $72,000, computed as follows:

Current-year production costs related to DPGR		$66,000
Plus:		
LIFO value of decrement	$6,000	
Ratio	100%	
Total		6,000
Total		72,000

Example 5. LIFO/FIFO ratio method. (i) The facts are the same as in *Example 3* except that Y uses the LIFO/FIFO ratio method to determine its CGS allocable to DPGR.

(ii) Y's CGS related to item A on a FIFO basis is $46,750 ((2,000 units at $5) + (7,000 units at $5.25)).

(iii) Y's total CGS computed on a LIFO basis is $154,500 (beginning inventory of $15,000 plus total production costs of $166,500 less ending inventory of $27,000).

(iv) Y's total CGS computed on a FIFO basis is $151,500 (beginning inventory of $15,000 plus total production costs of $166,500 less ending inventory of $30,000).

(v) The ratio of Y's CGS computed using the LIFO method to its CGS computed using the FIFO method is 102% ($154,500/$151,500). Y's CGS related to DPGR computed using the LIFO/FIFO ratio method is $47,685 ($46,750 × 102%).

Example 6. LIFO/FIFO ratio method. (i) The facts are the same as in *Example 4* except that Y uses the LIFO/FIFO ratio method to compute CGS allocable to DPGR.

(ii) Y's CGS related to item A on a FIFO basis is $70,750 ((3,000 units at $5.25) + (10,000 units at $5.50)).

(iii) Y's total CGS computed on a LIFO basis is $222,000 (beginning inventory of $27,000 plus total production costs of $216,000 less ending inventory of $21,000).

(iv) Y's total CGS computed on a FIFO basis is $220,000 (beginning inventory of $30,000 plus total production costs of $216,000 less ending inventory of $26,000).

(v) The ratio of Y's CGS computed using the LIFO method to its CGS computed using the FIFO method is 101% ($222,000/$220,000). Y's CGS related to DPGR computed using the LIFO/FIFO ratio method is $71,457 ($70,750 × 101%).

(c) *Other deductions allocable or apportioned to domestic production gross receipts or gross income attributable to domestic production gross receipts*—(1) *In general.* In determining its QPAI, a taxpayer must subtract from its DPGR, in addition to its CGS allocable to DPGR, the deductions that are directly allocable to DPGR, and a ratable portion of deductions that are not directly allocable to DPGR or to another class of income. A taxpayer generally must allocate and apportion these deductions using the rules of the section 861 method. In lieu of the section 861 method, certain taxpayers may apportion these deductions using the simplified deduction method provided in paragraph (e) of this section. Paragraph (f) of this section provides a small business simplified overall method that may be used by a qualified small taxpayer, as defined in that paragraph. A taxpayer using the simplified deduction method or the small business simplified overall method must use that method for all deductions. A taxpayer eligible to use the small business simplified overall method may choose at any time to use the small business simplified overall method, the simplified deduction method, or the section 861 method for a taxable year. A taxpayer eligible to use the simplified deduction method may choose at any time to use the simplified deduction method or the section 861 method for a taxable year.

(2) *Treatment of certain deductions*—(i) *In general.* The rules provided in this paragraph (c)(2) apply to net operating losses and certain other deductions for purposes of allocating and apportioning deductions to DPGR or gross income attributable to DPGR for all of the methods provided by this section.

(ii) *Net operating losses.* A deduction under section 172 for a net operating loss is not allocated or apportioned to DPGR or gross income attributable to DPGR.

(iii) *Deductions not attributable to the conduct of a trade or business.* Deductions not attributable to the conduct of a trade or business are not allocated or apportioned to DPGR or gross income attributable to DPGR. For example, the standard deduction provided by section 63(c) and the deduction for personal exemptions provided by section 151 are not allocated or apportioned to DPGR or gross income attributable to DPGR.

(d) *Section 861 method*—(1) *In general.* A taxpayer must allocate and apportion its deductions using the allocation and apportionment rules provided by the section 861 method under which section 199 is treated as an operative section described in § 1.861–8(f). Accordingly, the taxpayer applies the rules of the section 861 regulations to allocate and apportion deductions (including its distributive share of deductions from pass-thru entities) to gross income attributable to DPGR. If the taxpayer applies the allocation and apportionment rules of the section 861 regulations for an operative section other than section 199, the taxpayer must use the same method of allocation and the same principles of apportionment for purposes of all operative sections (subject to the rules provided in paragraphs (c)(2) and (d)(2) and (3) of this section). See § 1.861–8(f)(2)(i).

(2) *Deductions for charitable contributions.* Deductions for charitable contributions (as allowed under sections 170, 873(b)(2), and 882(c)(1)(B)) must be ratably apportioned between gross income attributable to DPGR and other gross income based on the relative amounts of gross income. For individuals, this provision applies solely to deductions for charitable contributions that are attributable to the actual conduct of a trade or business.

(3) *Research and experimental expenditures.* Research and experimental expenditures must be allocated and apportioned in accordance with § 1.861–17 without taking into account the exclusive apportionment rule of § 1.861–17(b).

(4) *Deductions related to gross receipts deemed to be domestic production gross receipts.* If non-DPGR is treated as DPGR pursuant to §§ 1.199–1(d)(2) and 1.199–3(h)(4), (k)(4)(iv), (l)(1)(ii), (m)(4), or (n)(1), deductions related to such gross receipts that are treated as DPGR must be allocated or apportioned to gross income attributable to DPGR.

(5) *Examples.* The following examples illustrate the operation of the section 861 method. Assume that with respect to the allocation and apportionment of interest expense, § 1.861–10T does not apply in the following examples. The examples read as follows:

Example 1. General section 861 method. (i) X, a United States corporation that is not a member of an expanded affiliated group (EAG) (as defined in § 1.199–7), engages in activities that generate both DPGR and non-DPGR. All of X's production activities that generate DPGR are within Standard Industrial Classification (SIC) Industry Group AAA (SIC AAA)). All of X's production

activities that generate non-DPGR are within SIC Industry Group BBB (SIC BBB). X is able to identify from its books and records CGS allocable to DPGR and to non-DPGR. X incurs $900 of research and experimentation expenses (R&E) that are deductible under section 174, $300 of which are performed with respect to SIC AAA and $600 of which are performed with respect to SIC BBB. None of the R&E is legally mandated R&E as described in § 1.861–17(a)(4) and none of the R&E is included in CGS. X incurs section 162 selling expenses (that include W–2 wages as defined in § 1.199–2(f)) that are not includible in CGS and not directly allocable to any gross income. For 2010, the adjusted basis of X's assets that generate gross income attributable to DPGR and to non-DPGR is, respectively, $4,000 and $1,000. For 2010, X's taxable income is $1,380 based on the following Federal income tax items:

DPGR (all from sales of products within SIC AAA)	$3,000
Non-DPGR (all from sales of products within SIC BBB)	3,000
CGS allocable to DPGR (includes $100 of W–2 wages)	(600)
CGS allocable to non-DPGR (includes $100 of W–2 wages)	(1,800)
Section 162 selling expenses (includes $100 of W–2 wages)	(840)
Section 174 R&E–SIC AAA	(300)
Section 174 R&E–SIC BBB	(600)
Interest expense (not included in CGS)	(300)
Charitable contributions	(180)
X's taxable income	1,380

(ii) *X's QPAI.* X chooses to allocate and apportion its deductions to gross income attributable to DPGR under the section 861 method of this paragraph (d). In this case, the section 162 selling expenses (including W–2 wages) are definitely related to all of X's gross income. Based on the facts and circumstances of this specific case, apportionment of those expenses between DPGR and non-DPGR on the basis of X's gross receipts is appropriate. For purposes of apportioning R&E, X elects to use the sales method as described in § 1.861–17(c). X elects to apportion interest expense under the tax book value method of § 1.861–9T(g). X has $2,400 of gross income attributable to DPGR (DPGR of $3,000—CGS of $600 (includes $100 of W–2 wages) allocated based on X's books and records). X's QPAI for 2010 is $1,320, as shown below:

DPGR (all from sales of products within SIC AAA)	$3,000
CGS allocable to DPGR (includes $100 of W–2 wages)	(600)
Section 162 selling expenses (includes $100 of W–2 wages) ($840 × ($3,000 DPGR/$6,000 total gross receipts))	(420)
Interest expense (not included in CGS) ($300 × ($4,000 (X's DPGR assets)/$5,000 (X's total assets)))	(240)
Charitable contributions (not included in CGS) ($180 × ($2,400 gross income attributable to DPGR/$3,600 total gross income))	(120)
Section 174 R&E–SIC AAA	(300)
X's QPAI	1,320

(iii) *Section 199 deduction determination.* X's tentative deduction under § 1.199–1(a) (section 199 deduction) is $119 (.09 × (lesser of QPAI of $1,320 and taxable income of $1,380)) subject to the wage limitation of $150 (50% × $300). Accordingly, X's section 199 deduction for 2010 is $119.

Example 2. Section 861 method and EAG. (i) *Facts.* The facts are the same as in Example 1 except that X owns stock in Y, a United States corporation, equal to 75 percent of the total voting power of stock of Y and 80 percent of the total value of stock of Y. X and Y are not members of an affiliated group as defined in section 1504(a). Accordingly, the rules of § 1.861–14T do not apply to X's and Y's selling expenses, R&E, and charitable contributions. X and Y are, however, members of an affiliated group for purposes of allocating and apportioning interest expense (see § 1.861–11T(d)(6)) and are also members of an EAG. For 2010, the adjusted basis of Y's assets that generate gross income attributable to DPGR and to non-DPGR is, respectively, $21,000 and $24,000. All of Y's activities that generate DPGR are within SIC Industry Group AAA (SIC AAA). All of Y's activities that generate non-DPGR are within SIC Industry Group BBB (SIC BBB). None of X's and Y's sales are to each other. Y is not able to identify from its books and records CGS allocable to DPGR and non-DPGR. In this case, because CGS is definitely related under the facts and circumstances to all of Y's gross receipts, apportionment of CGS between DPGR and non-DPGR based on gross receipts is appropriate. For 2010, Y's taxable income is $1,910 based on the following tax items:

DPGR (all from sales of products within SIC AAA)	$3,000
Non-DPGR (all from sales of products within SIC BBB)	3,000
CGS allocated to DPGR (includes $300 of W–2 wages)	(1,200)
CGS allocated to non-DPGR (includes $300 of W–2 wages)	(1,200)
Section 162 selling expenses (includes $300 of W–2 wages)	(840)
Section 174 R&E–SIC AAA	(100)
Section 174 R&E–SIC BBB	(200)
Interest expense (not included in CGS and not subject to § 1.861–10T)	(500)
Charitable contributions	(50)
Y's taxable income	1,910

(ii) *QPAI.* (A) *X's QPAI.* Determination of X's QPAI is the same as in *Example 1* except that interest is apportioned to gross income attributable to DPGR based on the combined adjusted bases of X's and Y's assets. See § 1.861–11T(c). Accordingly, X's QPAI for 2010 is $1,410, as shown below:

DPGR (all from sales of products within SIC AAA)	$3,000
CGS allocated to DPGR (includes $300 of W–2 wages)	(600)
Section 162 selling expenses (includes $100 of W–2 wages) ($840 × ($3,000 DPGR/$6,000 total gross receipts))	(420)

Interest expense (not included in CGS and not subject to § 1.861–10T) ($300 × ($25,000 (tax book value of X's and Y's DPGR assets)/$50,000 (tax book value of X's and Y's total assets)))	(150)
Charitable contributions (not included in CGS) ($180 × ($2,400 gross income attributable to DPGR/$3,600 total gross income))	(120)
Section 174 R&E–SIC AAA	(300)
X's QPAI	1,410

(B) *Y's QPAI.* Y makes the same elections under the section 861 method as does X. Y has $1,800 of gross income attributable to DPGR (DPGR of $3,000—CGS of $1,200 allocated based on Y's gross receipts). Y's QPAI for 2010 is $1,005, as shown below:

DPGR (all from sales of products within SIC AAA)	$3,000
CGS allocated to DPGR (includes $300 of W–2 wages)	(1,200)
Section 162 selling expenses (includes $300 of W–2 wages) ($840 × ($3,000 DPGR/$6,000 total gross receipts))	(420)
Interest expense (not included in CGS and not subject to § 1.861–10T) ($500 × ($25,000 (tax book value of X's and Y's DPGR assets)/$50,000 (tax book value of X's and Y's total assets)))	(250)
Charitable contributions (not included in CGS) ($50 × ($1,800 gross income attributable to DPGR/$3,600 total gross income))	(25)
Section 174 R&E–SIC AAA	(100)
Y's QPAI	1,005

(iii) *Section 199 deduction determination.* The section 199 deduction of the X and Y EAG is determined by aggregating the separately determined QPAI, taxable income, and W–2 wages of X and Y. See § 1.199–7(b). Accordingly, the X and Y EAG's tentative section 199 deduction is $217 (.09 × (lesser of combined taxable incomes of X and Y of $3,290 (X's taxable income of $1,380 plus Y's taxable income of $1,910) and combined QPAI of $2,415 (X's QPAI of $1,410 plus Y's QPAI of $1,005)) subject to the wage limitation of $600 (50% × ($300 (X's W–2 wages) + $900 (Y's W–2 wages))). Accordingly, the X and Y EAG's section 199 deduction for 2010 is $217. The $217 is allocated to X and Y in proportion to their QPAI. See § 1.199–7(c).

(e) *Simplified deduction method*—(1) *In general.* A taxpayer with average annual gross receipts (as defined in paragraph (g) of this section) of $25,000,000 or less, or total assets at the end of the taxable year (as defined in paragraph (h) of this section) of $10,000,000 or less, may use the simplified deduction method to apportion deductions between DPGR and non-DPGR. This paragraph does not apply to CGS. Under the simplified deduction method, a taxpayer's deductions (except the net operating loss deduction as provided in paragraph (c)(2)(ii) of this section and deductions not attributable to the actual conduct of a trade or business as provided in paragraph (c)(2)(iii) of this section) are ratably apportioned between DPGR and non-DPGR based on relative gross receipts. Accordingly, the amount of deductions apportioned to DPGR is equal to the same proportion of the total deductions that the amount of DPGR bears to total gross receipts. Whether an owner of a pass-thru entity may use the simplified deduction method is determined at the level of the owner of the pass-thru entity. Whether a trust or an estate may use the simplified deduction method is determined at the trust or estate level. In the case of a trust or estate, the simplified deduction method is applied at the trust or estate level, taking into account the trust's or estate's DPGR, non-DPGR, and other items from all sources, including its distributive or allocable share of those items of any lower-tier entity, prior to any charitable or distribution deduction. In the case of an owner of any other pass-thru entity, the simplified deduction method is applied at the level of the owner of the pass-thru entity taking into account the owner's DPGR, non-DPGR, and other items from all sources including its distributive or allocable share of those items of the pass-thru entity.

(2) *Members of an expanded affiliated group*—(i) *In general.* Whether the members of an EAG may use the simplified deduction method is determined by reference to the average annual gross receipts and total assets of the EAG. If the average annual gross receipts of the EAG are less than or equal to $25,000,000 or the total assets of the EAG at the end of its taxable year are less than or equal to $10,000,000, each member of the EAG may individually determine whether to use the simplified deduction method, regardless of the cost allocation method used by the other members.

(ii) *Exception.* Notwithstanding paragraph (e)(2)(i) of this section, all members of the same consolidated group must use the same cost allocation method.

(iii) *Examples.* The following examples illustrate the application of paragraph (e)(2) of this section:

Example 1. Corporations X, Y, and Z are the only three members of an EAG. Neither X, Y, nor Z is a member of a consolidated group. X, Y, and Z have average annual gross receipts of $2,000,000, $7,000,000, and $13,000,000, respectively. X, Y, and Z each have total assets at the end of the taxable year of $5,000,000. Because the average annual gross receipts of the EAG are less than or equal to $25,000,000, each of X, Y, and Z may use either the simplified deduction method or the section 861 method.

Example 2. The facts are the same as in *Example 1* except that X and Y are members of the same consolidated group. X, Y, and Z may use either the simplified deduction method or the section 861 method. However, X and Y must use the same cost allocation method.

Example 3. The facts are the same as in *Example 1* except that Z's average annual gross receipts are $17,000,000. Because the average annual gross receipts of the EAG are greater than $25,000,000 and the total assets of the EAG at the end of the taxable year are greater than $10,000,000, X, Y, and Z must each use the section 861 method.

(f) *Small business simplified overall method*—(1) *In general.* A qualifying small taxpayer may use the small business simplified overall method to apportion CGS and deductions between DPGR and non-DPGR. Under the small business simplified overall method, a taxpayer's total costs for the current taxable year (as defined in paragraph (i) of this section) are apportioned between DPGR and other receipts based on relative gross receipts. Accordingly, the amount of total costs for the current taxable year apportioned to DPGR is equal to the same proportion of total costs for the current taxable year that the amount of DPGR bears to total gross receipts. In the case of a pass-thru entity, whether the small business simplified overall method may be used by such entity is determined at the pass-thru entity level and, if such entity is eligible, the small business simplified overall method is applied at the pass-thru entity level.

(2) *Qualifying small taxpayer.* For purposes of this paragraph (f), a *qualifying small taxpayer* is—

(i) A taxpayer that has both average annual gross receipts (as defined in paragraph (g) of this section) of $5,000,000 or less and total costs for the current taxable year of $5,000,000 or less;

(ii) A taxpayer that is engaged in the trade or business of farming that is not required to use the accrual method of accounting under section 447; or

(iii) A taxpayer that is eligible to use the cash method as provided in Rev. Proc. 2002–28 (2002–1 C.B. 815) (that is, certain taxpayers with average annual gross receipts of $10,000,000 or less that are not prohibited from using the cash method under section 448, including partnerships, S corporations, C corporations, or individuals). See § 601.601(d)(2) of this chapter.

(3) *Members of an expanded affiliated group*—(i) *In general.* Whether the members of an EAG may use the small business simplified overall method is determined by reference to all the members of the EAG. If both the average annual gross receipts and the total costs for the current taxable year of the EAG are less than or equal to $5,000,000; the EAG, viewed as a single corporation, is engaged in the trade or business of farming that is not required to use the accrual method of accounting under section 447; or the EAG, viewed as a single corporation, is eligible to use the cash method as provided in Rev. Proc. 2002–28, then each member of the EAG may individually determine whether to use the small business simplified overall method, regardless of the cost allocation method used by the other members.

(ii) *Exception.* Notwithstanding paragraph (f)(3)(i) of this section, all members of the same consolidated group must use the same cost allocation method.

(iii) *Examples.* The following examples illustrate the application of paragraph (f)(3) of this section:

Example 1. Corporations L, M, and N are the only three members of an EAG. Neither L, M, nor N is a member of a consolidated group. L, M, and N have average annual gross receipts and total costs for the current taxable year of $1,000,000, $1,500,000, and $2,000,000, respectively. Because both the average annual gross receipts and total costs for the current taxable year of the EAG are less than or equal to $5,000,000, each of L, M, and N may use the small business simplified overall method, the simplified deduction method, or the section 861 method.

Example 2. The facts are the same as in *Example 1* except that M and N are members of the same consolidated group. L, M, and N may use the small business simplified overall method, the simplified deduction method, or the section 861 method. However, M and N must use the same cost allocation method.

Example 3. The facts are the same as in *Example 1* except that N has average annual gross receipts of $4,000,000. Unless the EAG, viewed as a single corporation, is engaged in the trade or business of farming that is not required to use the accrual method of accounting under section 447, or the EAG, viewed as a single corporation, is eligible to use the cash method as provided in Rev. Proc. 2002–28, because the average annual gross receipts of the EAG are greater than $5,000,000, L, M, and N are all ineligible to use the small business simplified overall method.

(4) *Ineligible pass-thru entities.* Qualifying oil and gas partnerships under § 1.199–3(h)(7), EAG partnerships under § 1.199–3(h)(8), and trusts and estates under § 1.199–5(d) may not use the small business simplified overall method.

(g) *Average annual gross receipts*—(1) *In general.* For purposes of the simplified deduction method and the small business simplified overall method, average annual gross receipts means the average annual gross receipts of the taxpayer for the 3 taxable years (or, if fewer, the taxable years during which the taxpayer was in existence) preceding the current taxable year, even if one or more of such taxable years began before the effective date of section 199. In the case of any taxable year of less than 12 months (a short taxable year), the gross receipts shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.

(2) *Members of an EAG.* To compute the average annual gross receipts of an EAG, the gross receipts, for the entire taxable year, of each corporation that is a member of the EAG at the end of its taxable year that ends with or within the taxable year of the computing member (as described in § 1.199–7(h)) are aggregated.

(h) *Total assets*—(1) *In general.* For purposes of the simplified deduction method provided by paragraph (e) of this section, total assets means the total assets the taxpayer has at the end of the taxable year that are attributable to the taxpayer's trade or business. In the case of a C corporation, the corporation's total assets at the end of the taxable year is the amount required to be reported on Schedule L of the Form 1120, ''United States Corporation Income Tax Return,'' in accordance with the Form 1120 instructions.

(2) *Members of an EAG.* To compute the total assets at the end of the taxable year of an EAG, the total assets, at the end of its taxable year, of each corporation that is a member of the EAG at the end of its taxable year that ends with or within the taxable year of the computing member are aggregated.

(i) *Total costs for the current taxable year*—(1) *In general.* For purposes of the small business simplified overall method, total costs for the current taxable year means the total CGS and deductions (excluding the net operating loss deduction as provided in paragraph (c)(2)(ii) of this section and deductions not attributable to the conduct of a trade or business as provided in paragraph (c)(2)(iii) of this section) for the current taxable year.

(2) *Members of an EAG.* To compute the total costs for the current taxable year of an EAG, the total costs for the entire taxable year of each corporation that is a member of the EAG at the end of the taxable year that ends with or within the taxable year of the computing member are aggregated.

§ 1.199–5 Application of section 199 to pass-thru entities.

(a) *Partnerships*—(1) *Determination at partner level.* The deduction allowable under § 1.199–1(a) (section 199 deduction) is determined at the partner level. As a result, each partner must compute its deduction separately. For purposes of this section, each partner is allocated, in accordance with sections 702 and 704, its share of partnership items (including items of income, gain, loss, and deduction), cost of goods sold (CGS) allocated to such items of income, and gross receipts that are included in such items of income, even if the partner's share of CGS and other deductions and losses exceeds domestic production gross receipts (DPGR) (as defined in § 1.199–3(a)). A partnership may specially allocate items of income, gain, loss, or deduction to its partners, subject to the rules of section 704(b) and the supporting regulations. To determine its section 199 deduction for the taxable year, a partner generally aggregates its distributive share of such items, to the extent they are not otherwise disallowed by the Internal Revenue Code, with those items it incurs outside the partnership (whether directly or indirectly) for purposes of allocating and apportioning deductions to DPGR and computing its qualified production activities income (QPAI) (as defined in § 1.199–1(c)). However, if a partnership uses the small business simplified overall method described in § 1.199–4(f), then each partner is allocated its share of QPAI and W–2 wages (as defined in § 1.199–2(f)), which (subject to the limitation under section 199(d)(1)(B)) are combined with

the partner's QPAI and W–2 wages from other sources. Under this method, a partner's distributive share of QPAI from a partnership may be less than zero.

(2) *Disallowed deductions.* Deductions of a partnership that otherwise would be taken into account in computing the partner's section 199 deduction are taken into account only if and to the extent the partner's distributive share of those deductions from all of the partnership's activities is not disallowed by section 465, 469, 704(d), or any other provision of the Internal Revenue Code. If only a portion of the partner's distributive share of the losses or deductions is allowed for a taxable year, a proportionate share of those allowable losses or deductions that are allocated to the partnership's qualified production activities, determined in a manner consistent with sections 465, 469, 704(d), and any other applicable provision of the Internal Revenue Code, is taken into account in computing the section 199 deduction for that taxable year. To the extent that any of the disallowed losses or deductions are allowed in a later taxable year, the partner takes into account a proportionate share of those losses or deductions in computing its QPAI for that later taxable year.

(3) *Partner's share of W–2 wages.* Under section 199(d)(1)(B), a partner's share of W–2 wages of a partnership for purposes of determining the partner's section 199(b) limitation is the lesser of the partner's allocable share of those wages (without regard to section 199(d)(1)(B)), or 2 times 9 percent (3 percent for taxable years beginning in 2005 or 2006, and 6 percent for taxable years beginning in 2007, 2008, or 2009) of the QPAI computed by taking into account only the items of the partnership allocated to the partner for the taxable year of the partnership. In general, this QPAI calculation is performed by the partner using the same cost allocation method that the partner uses in calculating the partner's section 199 deduction. However, if a partnership uses the small business simplified overall method described in § 1.199–4(f), the QPAI used by each partner to determine the wage limitation under section 199(d)(1)(B) is the same as the share of QPAI allocated to the partner. Each partner must compute its share of W–2 wages from the partnership in accordance with section 199(d)(1)(B) (with W–2 wages being allocated to the partner in the same manner as is wage expense), and then add that share to its W–2 wages from other sources, if any. The application of section 199(d)(1)(B) therefore means that if QPAI, computed by taking into account only the items of the partnership allocated to the partner for the taxable year, is not greater than zero, the partner may not take into account any W–2 wages of the partnership in computing the partner's section 199 deduction. See § 1.199–2 for the computation of W–2 wages, and paragraph (f) of this section for rules regarding pass-thru entities in a tiered structure.

(4) *Examples.* The following examples illustrate the application of this paragraph (a). Assume that each partner has sufficient adjusted gross income or taxable income so that the section 199 deduction is not limited under section 199(a)(1)(B); that the partnership and each of its partners (whether individual or corporate) are calendar year taxpayers; and that the amount of the partnership's W–2 wages equals wage expense for each taxable year. The examples read as follows:

Example 1. Section 861 method with interest expense. (i) *Partnership Federal income tax items.* X and Y, unrelated United States corporations, are each 50% partners in PRS, a partnership that engages in production activities that generate both DPGR and non-DPGR. X and Y share all items of income, gain, loss, deduction, and credit 50% each. PRS is not able to identify from its books and records CGS allocable to DPGR and non-DPGR. In this case, because CGS is definitely related under the facts and circumstances to all of PRS's gross income, apportionment of CGS between DPGR and non-DPGR based on gross receipts is appropriate. For 2010, the adjusted basis of PRS business assets is $5,000, $4,000 of which generate gross income attributable to DPGR and $1,000 of which generate gross income attributable to non-DPGR. For 2010, PRS has the following Federal income tax items:

DPGR	$3,000
Non-DPGR	3,000
CGS (includes $200 of W–2 wages)	3,240
Section 162 selling expenses (includes $300 of W–2 wages)	1,200
Interest expense (not included in CGS)	300

(ii) *Allocation of PRS's items of income, gain, loss, deduction, or credit.* X and Y each receive the following distributive share of PRS's items of income, gain, loss, deduction or credit, as determined under the principles of § 1.704–1(b)(1)(vii):

Gross income attributable to DPGR ($1,500 (DPGR) − $810 (allocable CGS, includes $50 of W–2 wages))	$690
Gross income attributable to non-DPGR ($1,500 (non-DPGR) − $810 (allocable CGS, includes $50 of W–2 wages))	690
Section 162 selling expenses (includes $150 of W–2 wages)	600
Interest expense (not included in CGS)	150

(iii) *Determination of QPAI.* (A) *X's QPAI.* Because the section 199 deduction is determined at the partner level, X determines its QPAI by aggregating, to the extent necessary, its distributive share of PRS's Federal income tax items with all other such items from all other, non-PRS-related activities. For 2010, X does not have any other such items. For 2010, the adjusted basis of X's non-PRS assets, all of which are investment assets, is $10,000. X's only gross receipts for 2010 are those attributable to the allocation of gross income from PRS. X allocates and apportions its deductible items to gross income attributable to DPGR under the section 861 method of § 1.199–4(d). In this case, the section 162 selling expenses (including W–2 wages) are definitely related to all of PRS's gross receipts. Based on the facts and circumstances of this specific case, apportionment of those expenses between DPGR and non-DPGR on the basis of PRS's gross receipts is appropriate. X elects to apportion its distributive share of interest expense under the tax book value method of § 1.861–9T(g). X's QPAI for 2010 is $366, as shown below:

DPGR	$1,500
CGS allocable to DPGR (includes $50 of W–2 wages)	(810)
Section 162 selling expenses (includes $75 of W–2 wages) ($600 × $1,500/$3,000)	(300)
Interest expense (not included in CGS) ($150 × $2,000 (X's share of PRS's DPGR assets)/ $12,500 (X's non-PRS assets and X's share of PRS assets))	(24)
X's QPAI	366

(B) *Y's QPAI.* (*1*) For 2010, in addition to the activities of PRS, Y engages in production activities that generate both DPGR and non-DPGR. Y is able to identify from its books and records CGS allocable to DPGR and to non-DPGR. For 2010, the adjusted basis of Y's non-PRS assets attributable to its production activities that generate DPGR is $8,000 and to other production activities that

generate non-DPGR is $2,000. Y has no other assets. Y has the following Federal income tax items relating to its non-PRS activities:

Gross income attributable to DPGR ($1,500 (DPGR) − $900 (allocable CGS, includes $70 of W–2 wages))	$600
Gross income attributable to non-DPGR ($3,000 (other gross receipts) − $1,620 (allocable CGS, includes $150 of W–2 wages))	1,380
Section 162 selling expenses (includes $30 of W–2 wages)	540
Interest expense (not included in CGS)	90

(*2*) Y determines its QPAI in the same general manner as X. However, because Y has activities outside of PRS, Y must aggregate its distributive share of PRS's Federal income tax items with its own such items. Y allocates and apportions its deductible items to gross income attributable to DPGR under the section 861 method of § 1.199–4(d). In this case, Y's distributive share of PRS's section 162 selling expenses (including W–2 wages), as well as those selling expenses from Y's non-PRS activities, are definitely related to all of its gross income. Based on the facts and circumstances of this specific case, apportionment of those expenses between DPGR and non-DPGR on the basis of Y's gross receipts is appropriate. Y elects to apportion its distributive share of interest expense under the tax book value method of § 1.861–9T(g). Y has $1,290 of gross income attributable to DPGR ($3,000 DPGR ($1,500 from PRS and $1,500 from non-PRS activities) − $1,710 CGS ($810 from PRS and $900 from non-PRS activities). Y's QPAI for 2010 is $642, as shown below:

DPGR ($1,500 from PRS and $1,500 from non-PRS activities)	$3,000
CGS allocable to DPGR ($810 from PRS and $900 from non-PRS activities) (includes $120 of W–2 wages)	(1,710)
Section 162 selling expenses (includes $180 of W–2 wages) ($1,140 ($600 from PRS and $540 from non-PRS activities) × ($1,500 PRS DPGR + $1,500 non-PRS DPGR)/($3,000 PRS total gross receipts + $4,500 non-PRS total gross receipts))	(456)
Interest expense (not included in CGS) ($240 ($150 from PRS and $90 from non-PRS activities) × $10,000 (Y's non-PRS DPGR assets and Y's share of PRS DPGR assets)/$12,500 (Y's non-PRS assets and Y's share of PRS assets))	(192)
Y's QPAI	642

(iv) *PRS W–2 wages allocated to X and Y under section 199(d)(1)(B).* Solely for purposes of calculating the PRS W–2 wages that are allocated to them under section 199(d)(1)(B) for purposes of the wage limitation of section 199(b), X and Y must separately determine QPAI taking into account only the items of PRS allocated to them. X and Y must use the same methods of allocation and apportionment that they use to determine their QPAI in paragraphs (iii)(A) and (B) of this *Example 1*, respectively. Accordingly, X and Y must apportion deductible section 162 selling expenses which includes W–2 wage expense on the basis of gross receipts, and apportion interest expense according to the tax book value method of § 1.861–9T(g).

(A) QPAI of X and Y, solely for this purpose, is determined by allocating and apportioning each partner's share of PRS expenses to each partner's share of PRS gross income of $690 attributable to DPGR ($1,500 DPGR − $810 CGS, apportioned based on gross receipts). Thus, QPAI of X and Y solely for this purpose is $270, as shown below:

DPGR	$1,500
CGS allocable to DPGR	(810)
Section 162 selling expenses (including W–2 wages) ($600 × ($1,500/$3,000))	(300)
Interest expense (not included in CGS) ($150 × $2,000 (partner's share of adjusted basis of PRS's DPGR assets)/$2,500 (partner's share of adjusted basis of total PRS assets))	(120)
QPAI	270

(B) X's and Y's shares of PRS's W–2 wages determined under section 199(d)(1)(B) for purposes of the wage limitation of section 199(b) are $49, the lesser of $250 (partner's allocable share of PRS's W–2 wages ($100 included in CGS, and $150 included in selling expenses) and $49 (2 × ($270 × .09)).

(v) *Section 199 deduction determination.* (A) X's tentative section 199 deduction is $33 (.09 × $366 (that is, QPAI determined at partner level)) subject to the wage limitation of $25 (50% × $49). Accordingly, X's section 199 deduction for 2010 is $25.

(B) Y's tentative section 199 deduction is $58 (.09 × $642 (that is, QPAI determined at the partner level) subject to the wage limitation of $150 (50% × ($49 (from PRS)) and $250 (from non-PRS activities)). Accordingly, Y's section 199 deduction for 2010 is $58.

Example 2. Section 861 method with R&E expense. (i) *Partnership items of income, gain, loss, deduction or credit.* X and Y, unrelated United States corporations, are partners in PRS, a partnership that engages in production activities that generate both DPGR and non-DPGR. Neither X nor Y is a member of an affiliated group. X and Y share all items of income, gain, loss, deduction, and credit 50% each. All of PRS's domestic production activities that generate DPGR are within Standard Industrial Classification (SIC) Industry Group AAA (SIC AAA). All of PRS's production activities that generate non-DPGR are within SIC Industry Group BBB (SIC BBB). PRS is not able to identify from its books and records CGS allocable to DPGR and to non-DPGR and, therefore, apportions CGS to DPGR and non-DPGR based on its gross receipts. PRS incurs $900 of research and experimentation expenses (R&E) that are deductible under section 174, $300 of which are performed with respect to SIC AAA and $600 of which are performed with respect to SIC BBB. None of the R&E is legally mandated R&E as described in § 1.861–17(a)(4) and none is included in CGS. PRS incurs section 162 selling expenses (that include W–2 wage expense) that are not includible in CGS and not directly allocable to any gross income. For 2010, PRS has the following Federal income tax items:

DPGR (all from sales of products within SIC AAA)	$3,000
Non-DPGR (all from sales of products within SIC BBB)	3,000
CGS (includes $200 of W–2 wages)	2,400
Section 162 selling expenses (includes $100 of W–2 wages)	840
Section 174 R&E–SIC AAA	300
Section 174 R&E–SIC BBB	600

(ii) *Allocation of PRS's items of income, gain, loss, deduction, or credit.* X and Y each receive the following distributive share of PRS's items of income, gain, loss, deduction, or credit, as determined under the principles of § 1.704–1(b)(1)(vii):

Gross income attributable to DPGR ($1,500 (DPGR) − $600 (CGS, includes $50 of W–2 wages))	$900
Gross income attributable to non-DPGR ($1,500 (other gross receipts) − $600 (CGS, includes $50 of W–2 wages))	900
Section 162 selling expenses (includes $50 of W–2 wages)	420
Section 174 R&E–SIC AAA	150
Section 174 R&E–SIC BBB	300

(iii) *Determination of QPAI.* (A) *X's QPAI.* Because the section 199 deduction is determined at the partner level, X determines its QPAI by aggregating, to the extent necessary, its distributive shares of PRS's Federal income tax items with all other such items from all other, non-PRS-related activities. For 2010, X does not have any other such tax items. X's only gross receipts for 2010 are those attributable to the allocation of gross income from PRS. As stated, all of PRS's domestic production activities that generate DPGR are within SIC AAA. X allocates and apportions its deductible items to gross income attributable to DPGR under the section 861 method of § 1.199–4(d). In this case, the section 162 selling expenses (including W–2 wages) are definitely related to all of PRS's gross income. Based on the facts and circumstances of this specific case, apportionment of those expenses between DPGR and non-DPGR on the basis of PRS's gross receipts is appropriate. For purposes of apportioning R&E, X elects to use the sales method as described in § 1.861–17(c). Because X has no direct sales of products,

and because all of PRS's SIC AAA sales attributable to X's share of PRS's gross income generate DPGR, all of X's share of PRS's section 174 R&E attributable to SIC AAA is taken into account for purposes of determining X's QPAI. Thus, X's total QPAI for 2010 is $540, as shown below:

DPGR (all from sales of products within SIC AAA)	$1,500
CGS (includes $50 of W–2 wages)	(600)
Section 162 selling expenses (including W–2 wages) ($420 × ($1,500 DPGR/$3,000 total gross receipts))	(210)
Section 174 R&E–SIC AAA	(150)
X's QPAI	540

(B) *Y's QPAI.* (*1*) For 2010, in addition to the activities of PRS, Y engages in domestic production activities that generate both DPGR and non-DPGR. With respect to those non-PRS activities, Y is not able to identify from its books and records CGS allocable to DPGR and to non-DPGR. In this case, because CGS is definitely related under the facts and circumstances to all of Y's non-PRS gross receipts, apportionment of CGS between DPGR and non-DPGR based on Y's non-PRS gross receipts is appropriate. For 2010, Y has the following non-PRS Federal income tax items:

DPGR (from sales of products within SIC AAA)	$1,500
DPGR (from sales of products within SIC BBB)	1,500
Non-DPGR (from sales of products within SIC BBB)	3,000
CGS (allocated to DPGR within SIC AAA) (includes $56 of W–2 wages)	750
CGS (allocated to DPGR within SIC BBB) (includes $56 of W–2 wages)	750
CGS (allocated to non-DPGR within SIC BBB) (includes $113 of W–2 wages)	1,500
Section 162 selling expenses (includes $30 of W–2 wages)	540
Section 174 R&E–SIC AAA	300
Section 174 R&E–SIC BBB	450

(*2*) Because Y has DPGR as a result of activities outside PRS, Y must aggregate its distributive share of PRS's Federal income tax items with such items from all its other, non-PRS-related activities. Y allocates and apportions its deductible items to gross income attributable to DPGR under the section 861 method of § 1.199–4(d). In this case, the section 162 selling expenses (including W–2 wages) are definitely related to all of Y's gross income. Based on the facts and circumstances of the specific case, apportionment of such expenses between DPGR and non-DPGR on the basis of Y's gross receipts is appropriate. For purposes of apportioning R&E, Y elects to use the sales method as described in § 1.861–17(c).

(*3*) With respect to sales that generate DPGR, Y has gross income of $2,400 ($4,500 DPGR ($1,500 from PRS and $3,000 from non-PRS activities) – $2,100 CGS ($600 from sales of products by PRS and $1,500 from non-PRS activities)). Because all of the sales in SIC AAA generate DPGR, all of Y's share of PRS's section 174 R&E attributable to SIC AAA and the section 174 R&E attributable to SIC AAA that Y incurs in its non-PRS activities are taken into account for purposes of determining Y's QPAI. Because only a portion of the sales within SIC BBB generate DPGR, only a portion of the section 174 R&E attributable to SIC BBB is taken into account in determining Y's QPAI. Thus, Y's QPAI for 2010 is $1,282, as shown below:

DPGR ($4,500 DPGR ($1,500 from PRS and $3,000 from non-PRS activities	$4,500
CGS ($600 from sales of products by PRS and $1,500 from non-PRS activities	(2,100)
Section 162 selling expenses (including W–2 wages) ($420 from PRS + $540 from non-PRS activities) × ($4,500 DPGR/$9,000 total gross receipts))	(480)
Section 174 R&E–SIC AAA ($150 from PRS and $300 from non-PRS activities)	(450)
Section 174 R&E–SIC BBB ($300 from PRS + $450 from non-PRS activities) × ($1,500 DPGR/$6,000 total gross receipts allocated to SIC BBB)	(188)
Y's QPAI	1,282

(iv) *PRS W–2 wages allocated to X and Y under section 199(d)(1)(B).* Solely for purposes of calculating the PRS W–2 wages that are allocated to X and Y under section 199(d)(1)(B) for purposes of the wage limitation of section 199(b), X and Y must separately determine QPAI taking into account only the items of PRS allocated to them. X and Y must use the same methods of allocation and apportionment that they use to determine their QPAI in paragraphs (iii)(A) and (B) of this *Example 2*, respectively. Accordingly, X and Y must apportion section 162 selling expense which includes W–2 wage expense on the basis of gross receipts, and apportion section 174 R&E expense under the sales method as described in § 1.861–17(c).

(A) QPAI of X and Y, solely for this purpose, is determined by allocating and apportioning each partner's share of PRS expenses to each partner's share of PRS gross income of $900 attributable to DPGR ($1,500 DPGR – $600 CGS, allocated based on PRS's gross receipts). Because all of PRS's SIC AAA sales generate DPGR, all of X's and Y's shares of PRS's section 174 R&E attributable to SIC AAA is taken into account for purposes of determining X's and Y's QPAI. None of PRS's section 174 R&E attributable to SIC BBB is taken into account because PRS has no DPGR within SIC BBB. Thus, X and Y each has QPAI, solely for this purpose, of $540, as shown below:

DPGR (all from sales of products within SIC AAA)	$1,500
CGS (includes $50 of W–2 wages	(600)
Section 162 selling expenses (including W–2 wages) ($420 × $1,500/$3,000)	(210)
Section 174 R&E–SIC AAA	(150)
QPAI	540

(B) X's and Y's shares of PRS's W–2 wages determined under section 199(d)(1)(B) for purposes of the wage limitation of section 199(b) are $97, the lesser of $150 (partner's allocable share of PRS's W–2 wages ($100 included in CGS, and $50 included in selling expenses)) and $97 (2 × ($540 × .09)).

(v) *Section 199 deduction determination.* (A) X's tentative section 199 deduction is $49 (.09 × $540 (QPAI determined at partner level)) subject to the wage limitation of $49 (50% × $97). Accordingly, X's section 199 deduction for 2010 is $49.

(B) Y's tentative section 199 deduction is $115 (.09 × $1,282 (QPAI determined at partner level) subject to the wage limitation of $176 (50% × $352 ($97 from PRS + $255 from non-PRS activities)). Accordingly, Y's section 199 deduction for 2010 is $115.

Example 3. Simplified deduction method with special allocations. (i) *In general.* X and Y are unrelated corporate partners in PRS. PRS engages in a domestic production activity and other activities. In general, X and Y share all partnership items of income, gain, loss, deduction, and credit equally, except that 80% of the wage expense of PRS and 20% of PRS's other expenses are specially allocated to X (substantial economic effect under section 704(b) is presumed). In the 2010 taxable year, PRS's only wage expense is $2,000 for marketing, which is not included in CGS. PRS has $8,000 of gross receipts ($6,000 of which is DPGR), $4,000 of CGS ($3,500 of which is allocable to DPGR), and $3,000 of deductions (comprised of $2,000 of wages for marketing and $1,000 of other expenses). X qualifies for and uses the simplified deduction method under § 1.199–4(e). Y does not qualify to use that method and therefore, must use the section 861 method under § 1.199–4(d). In the 2010 taxable year, X has gross receipts attributable to non-partnership activities of $1,000 and wages of $200. None of X's non-PRS gross receipts is DPGR.

(ii) *Allocation and apportionment of costs.* Under the partnership agreement, X's distributive share of the items of the partnership is $1,250 of gross income attributable to DPGR ($3,000 DPGR – $1,750 allocable CGS), $750 of gross income attributable to non-DPGR ($1,000 non-DPGR – $250 allocable CGS), and $1,800 of deductions (comprised of X's special allocations of $1,600 of wage expense for marketing and $200 of other expenses). Under the simplified deduction method, X apportions $1,200 of other deductions to DPGR ($2,000 ($1,800 from the partnership and $200 from non-partnership activities) × ($3,000 DPGR/$5,000 total gross receipts)). Accordingly, X's QPAI is $50 ($3,000 DPGR – $1,750 CGS – $1,200 of deductions). However, in determining the section 199(d)(1)(B) wage limitation, QPAI is computed taking into account only the items of the partnership allocated to the partner for the taxable year of the partnership. Thus, X

apportions $1,350 of deductions to DPGR ($1,800 × ($3,000 DPGR/$4,000 total gross receipts from PRS)). Accordingly, X's QPAI for purposes of the section 199(d)(1)(B) wage limitation is $0 ($3,000 DPGR − $1,750 CGS − $1,350 of deductions). X's share of PRS's W–2 wages is $0, the lesser of $1,600 (X's 80% allocable share of $2,000 of wage expense for marketing) or $0 (2 × ($0 QPAI x .09)). X's tentative deduction is $5 ($50 QPAI × .09), subject to the section 199(b)(1) wage limitation of $100 (50% × $200 ($0 of PRS-related W–2 wages + $200 of non-PRS W–2 wages)). Accordingly, X's total section 199 deduction for the 2010 taxable year is $5.

Example 4. Small business simplified overall method. A, an individual, and X, a corporation, are partners in PRS. PRS engages in manufacturing activities that generate both DPGR and non-DPGR. A and X share all items of income, gain, loss, deduction, and credit equally. In the 2010 taxable year, PRS has total gross receipts of $2,000 ($1,000 of which is DPGR), CGS of $800 (including $400 of W–2 wages), and deductions of $800. A and PRS use the small business simplified overall method under § 1.199–4(f). X uses the section 861 method. Under the small business simplified overall method, PRS's CGS and deductions apportioned to DPGR equal $800 (($800 CGS plus $800 of other deductions) × ($1,000 DPGR/$2,000 total gross receipts)). Accordingly, PRS's QPAI is $200 ($1,000 DPGR − $800 CGS and other deductions). Under the partnership agreement, PRS's QPAI is allocated $100 to A and $100 to X. A's share of partnership W–2 wages for purposes of the section 199(d)(1)(B) limitation is $18, the lesser of $200 (A's 50% allocable share of PRS's $400 of W–2 wages) or $18 (2 × ($100 QPAI × .09)). A's tentative deduction is $9 ($100 QPAI × .09), subject to the section 199(b)(1) wage limitation of $9 (50% × $18). Assuming that A engages in no other activities generating DPGR, A's total section 199 deduction for the 2010 taxable year is $9. X must use $100 of QPAI and $18 of W–2 wages to determine its section 199 deduction using the section 861 method.

(b) *S corporations*—(1) *Determination at shareholder level.* The section 199 deduction is determined at the shareholder level. As a result, each shareholder must compute its deduction separately. For purposes of this section, each shareholder is allocated, in accordance with section 1366, its pro rata share of S corporation items (including items of income, gain, loss, and deduction), CGS allocated to such items of income, and gross receipts included in such items of income, even if the shareholder's share of CGS and other deductions and losses exceeds DPGR. To determine its section 199 deduction for the taxable year, the shareholder generally aggregates its pro rata share of such items, to the extent they are not otherwise disallowed by the Internal Revenue Code, with those items it incurs outside the S corporation (whether directly or indirectly) for purposes of allocating and apportioning deductions to DPGR and computing its QPAI. However, if an S corporation uses the small business simplified overall method described in § 1.199–4(f), then each shareholder is allocated its share of QPAI and W–2 wages, which (subject to the limitation under section 199(d)(1)(B)) are combined with the shareholder's QPAI and W–2 wages from other sources. Under this method, a shareholder's share of QPAI from an S corporation may be less than zero.

(2) *Disallowed deductions.* Deductions of the S corporation that otherwise would be taken into account in computing the shareholder's section 199 deduction are taken into account only if and to the extent the shareholder's pro rata share of the losses or deductions from all of the S corporation's activities are not disallowed by section 465, 469, 1366(d), or any other provision of the Internal Revenue Code. If only a portion of the shareholder's pro rata share of the losses or deductions is allowed for a taxable year, a proportionate share of the losses or deductions allocated to the S corporation's qualified production activities, determined in a manner consistent with sections 465, 469, 1366(d), and any other applicable provision of the Internal Revenue Code, is taken into account in computing the section 199 deduction for that taxable year. To the extent that any of the disallowed losses or deductions is allowed in a later taxable year, the shareholder takes into account a proportionate share of those losses or deductions in computing its QPAI for that later taxable year.

(3) *Shareholder's share of W–2 wages.* Under section 199(d)(1)(B), an S corporation shareholder's share of the W–2 wages of the S corporation for purposes of determining the shareholder's section 199(b) limitation is the lesser of the shareholder's allocable share of those wages (without regard to section 199(d)(1)(B)), or 2 times 9 percent (3 percent for taxable years beginning in 2005 or 2006, and 6 percent for taxable years beginning in 2007, 2008, or 2009) of the QPAI computed by taking into account only the items of the S corporation allocated to the shareholder for the taxable year. In general, this QPAI calculation is performed by the shareholder using the same cost allocation method that the shareholder uses in calculating the shareholder's section 199 deduction. However, if an S corporation uses the small business simplified overall method described in § 1.199–4(f), the QPAI used by each shareholder to determine the wage limitation under section 199(d)(1)(B) is the same as the share of QPAI allocated to the shareholder. Each shareholder must compute its share of W–2 wages from an S corporation in accordance with section 199(d)(1)(B) (with W–2 wages being allocated to the shareholder in the same manner as is wage expense), and then add that share to the shareholder's W–2 wages from other sources, if any. The application of section 199(d)(1)(B) therefore means that if QPAI, computed by taking into account only the items of the S corporation allocated to the shareholder for the taxable year, is not greater than zero, the shareholder may not take into account any W–2 wages of the S corporation in computing the shareholder's section 199 deduction. See § 1.199–2 for the computation of W–2 wages, and paragraph (f) of this section for rules regarding pass-thru entities in a tiered structure.

(c) *Grantor trusts.* To the extent that the grantor or another person is treated as owning all or part (the owned portion) of a trust under sections 671 through 679, the owner computes its QPAI with respect to the owned portion of the trust as if that QPAI had been generated by activities performed directly by the owner. Similarly, for purposes of the section 199(b) wage limitation, the owner of the trust takes into account the owner's share of the W–2 wages of the trust that are attributable to the owned portion of the trust. The section 199(d)(1)(B) wage limitation is not applicable to the owned portion of the trust.

(d) *Non-grantor trusts and estates*—(1) *Computation of section 199 deduction.* Except as provided in paragraph (c) of this section, solely for purposes of determining the section 199 deduction for the taxable year, the QPAI of a trust or estate must be computed by allocating expenses described in section 199(d)(5) under § 1.652(b)–3 with respect to directly attributable expenses, and under the simplified deduction method of § 1.199–4(e) with respect to other expenses described in section 199(d)(5) (unless the trust or estate does not qualify to use the simplified deduction method, in which case it must use the section 861 method of § 1.199–4(d) with respect to such other expenses). For this purpose, the trust's or estate's share of other expenses from a lower-tier pass-thru entity is not directly attributable to any class of income (whether or not those other expenses are directly attributable to the aggregate pass-thru gross income as a class for purposes other than section 199). A trust or estate may not use the small business simplified overall method for computing its QPAI. See

§ 1.199–4(f)(4). The QPAI (which will be less than zero if the CGS and deductions allocated and apportioned to DPGR exceed the trust's or estate's DPGR) and W–2 wages of the trust or estate are allocated to each beneficiary and to the trust or estate based on the relative proportion of the trust's or estate's distributable net income (DNI), as defined by section 643(a), for the taxable year that is distributed or required to be distributed to the beneficiary or is retained by the trust or estate. To the extent that the trust or estate has no DNI for the taxable year, any QPAI and W–2 wages are allocated entirely to the trust or estate. A trust or estate may claim the section 199 deduction in computing its taxable income to the extent that QPAI and W–2 wages are allocated to the trust or estate. A beneficiary of a trust or estate is allowed the section 199 deduction in computing its taxable income based on its share of QPAI and W–2 wages from the trust or estate, which (subject to the wage limitation of section 199(d)(1)(B)) are aggregated with the beneficiary's QPAI and W–2 wages from other sources. Each beneficiary must compute its share of W–2 wages from a trust or estate in accordance with section 199(d)(1)(B). The application of section 199(d)(1)(B) therefore means that if QPAI, computed by taking into account only the items of the trust or estate allocated to the beneficiary for the taxable year, is not greater than zero, the beneficiary may not take into account any W–2 wages of the trust or estate in computing the beneficiary's section 199 deduction. See paragraph (f) of this section for rules applicable to pass-thru entities in a tiered structure.

(2) *Example.* The following example illustrates the application of this paragraph (d). Assume that the partnership, trust, and trust beneficiary all are calendar year taxpayers. The example is as follows:

Example. (i) *Computation of DNI and inclusion and deduction amounts.* (A) *Trust's distributive share of partnership items.* Trust, a complex trust, is a partner in PRS, a partnership that engages in activities that generate DPGR and non-DPGR. In 2010, PRS distributes $10,000 to Trust. Trust's distributive share of PRS items, which are properly included in Trust's DNI, is as follows:

Gross income attributable to DPGR ($15,000 DPGR – $5,000 CGS (including W–2 wages of 1,000))	$10,000
Gross income attributable to other gross receipts ($5,000 other gross receipts – $0 CGS)	5,000
Selling expenses (includes W–2 wages of $2,000).	3,000
Other expenses (includes W–2 wages of $1,000)	2,000

(B) *Trust's direct activities.* In addition to receiving in 2010 the distribution from PRS, Trust also directly has the following items which are properly included in Trust's DNI:

Dividends	$10,000
Tax-exempt interest	10,000
Rents from commercial real property that is subject to a section 6166 election	10,000
Real estate taxes	1,000
Trustee commissions	3,000
State income and personal property taxes	5,000
W–2 wages	2,000
Other business expenses	1,000

(C) *Allocation of deductions under § 1.652(b)–3. (1) Directly attributable expenses.* In computing Trust's DNI for the taxable year, the distributive share of expenses of PRS are directly attributable under § 1.652(b)–3(a) to the distributive share of income of PRS. Accordingly, the $20,000 of gross receipts from PRS is reduced by $5,000 of CGS, $3,000 of selling expenses, and $2,000 of other expenses, resulting in net income from PRS of $10,000. With respect to the Trust's direct expenses, $1,000 of the trustee commissions, the $1,000 of real estate taxes, and the $2,000 of W–2 wages are directly attributable under § 1.652(b)–3(a) to the rental income.

(2) Non-directly attributable expenses. Under § 1.652(b)–3(b), the trustee must allocate a portion of the sum of the balance of the trustee commissions ($2,000), state income and personal property taxes ($5,000), and the other business expenses ($1,000) to the $10,000 of tax-exempt interest. The portion to be attributed to tax-exempt interest is $2,222 ($8,000 × ($10,000 tax exempt interest/$36,000 gross receipts net of direct expenses)), resulting in $7,778 ($10,000 – $2,222) of net tax-exempt interest. Pursuant to its authority recognized under § 1.652(b)–3(b), the trustee allocates the entire amount of the remaining $5,778 of trustee commissions, state income and personal property taxes, and other business expenses to the $6,000 of net rental income, resulting in $222 ($6,000 – $5,778) of net rental income.

(D) *Amounts included in taxable income.* For 2010, Trust has DNI of $28,000 (net dividend income of $10,000 + net PRS income of $10,000 + net rental income of $222 + net tax-exempt income of $7,778). Pursuant to Trust's governing instrument, Trustee distributes 50%, or $14,000, of that DNI to B, an individual who is a discretionary beneficiary of Trust. Assume that there are no separate shares under Trust, and no distributions are made to any other beneficiary that year. Consequently, with respect to the $14,000 distribution, B properly includes in B's gross income $5,000 of income from PRS, $111 of rents, and $5,000 of dividends, and properly excludes from B's gross income $3,889 of tax-exempt interest. Trust includes $20,222 in its adjusted total income and deducts $10,111 under section 661(a) in computing its taxable income.

(ii) *Section 199 deduction.* (A) *Simplified deduction method.* For purposes of computing the section 199 deduction for the taxable year, assume Trust qualifies for the simplified deduction method under § 1.199–4(e). Determining Trust's QPAI under the simplified deduction method requires a multi-step approach to allocating costs. In step 1, the Trust's DPGR is first reduced by the Trust's expenses directly attributable to DPGR under § 1.652(b)–3(a). In this step, the $15,000 of DPGR from PRS is reduced by the directly attributable $5,000 of CGS and selling expenses of $3,000. In step 2, Trust allocates its other business expenses on the basis of its total gross receipts. In this example, the portion of the trustee commissions not directly attributable to the rental operation, as well as the portion of the state income and personal property taxes not directly attributable to either the PRS interests or the rental operation, are not trade or business expenses and, thus, are ignored in computing QPAI. The portion of the state income and personal property taxes that is treated as other trade or business expenses is $3,000 ($5,000 × $30,000 total trade or business gross receipts/$50,000 total gross receipts). Trust then combines its non-directly attributable (other) expenses ($2,000 from PRS + $4,000 ($1,000 + $3,000) from its own activities) and then apportions this total between DPGR and other receipts on the basis of Trust's total gross receipts ($6,000 × $15,000 DPGR/$50,000 total gross receipts = $1,800). Thus, for purposes of computing Trust's and B's section 199 deduction, Trust's QPAI is $5,200 ($7,000 – $1,800). Because the distribution of Trust's DNI to B equals

one-half of Trust's DNI, Trust and B each has QPAI from PRS for purposes of the section 199 deduction of $2,600.

(B) *Section 199(d)(1)(B) wage limitation.* The wage limitation under section 199(d)(1)(B) must be applied both at the Trust level and at B's level. After applying this limitation to the Trust's share of PRS's W–2 wages, Trust is allocated $990 of W–2 wages from PRS (the lesser of Trust's allocable share of PRS's W–2 wages ($4,000) or 2 × 9% of PRS's QPAI ($5,500)). PRS's QPAI for purposes of the section 199(d)(1)(B) limitation is determined by taking into account only the items of PRS allocated to Trust ($15,000 DPGR—($5,000 of CGS + $3,000 selling expenses + $1,500 of other expenses). For this purpose, the $1,500 of other expenses is determined by multiplying $2,000 of other expenses from PRS by $15,000 of DPGR from PRS, divided by $20,000 of total gross receipts from PRS. Trust adds this $990 of W–2 wages to Trust's own $2,000 of W–2 wages (thus, $2,990). Because the $14,000 distribution to B equals one-half of Trust's DNI, Trust and B each has W–2 wages of $1,495. After applying the section 199(d)(1)(B) wage limitation to B's share of the W–2 wages allocated from Trust, B has W–2 wages of $468 from Trust (lesser of $1,495 (allocable share of W–2 wages) or 2 × .09 × $2,600 (Trust's QPAI)). B has W–2 wages of $100 from non-Trust activities for a total of $568 of W–2 wages.

(C) *Section 199 deduction computation.* (*1*) *B's computation.* B is eligible to use the small business simplified overall method. Assume that B has sufficient adjusted gross income so that the section 199 deduction is not limited under section 199(a)(1)(B). B has $1,000 of QPAI from non-Trust activities which is added to the $2,600 QPAI from Trust for a total of $3,600 of QPAI. B's tentative deduction is $324 (.09 × $3,600) which is limited under section 199(b) to $284 (50% × $568 W–2 wages). Accordingly, B's section 199 deduction for 2010 is $284.

(*2*) *Trust's computation.* Trust has sufficient taxable income so that the section 199 deduction is not limited under section 199(a)(1)(B). Trust's tentative deduction is $234 (.09 × $2,600 QPAI) which is limited under section 199(b) to $748 (50% × $1,495 W–2 wages). Accordingly, Trust's section 199 deduction for 2010 is $234.

(e) *Gain or loss from the disposition of an interest in a pass-thru entity.* DPGR generally does not include gain or loss recognized on the sale, exchange, or other disposition of an interest in a pass-thru entity. However, with respect to partnerships, if section 751(a) or (b) applies, gain or loss attributable to assets of the partnership giving rise to ordinary income under section 751(a) or (b), the sale, exchange, or other disposition of which would give rise to DPGR, is taken into account in computing the partner's section 199 deduction. Accordingly, to the extent that money or property received by a partner in a sale or exchange for all or part of its partnership interest is attributable to unrealized receivables or inventory items within the meaning of section 751(c) or (d), respectively, and the sale or exchange of the unrealized receivable or inventory items would give rise to DPGR if sold or exchanged or otherwise disposed of by the partnership, the money or property received is taken into account by the partner in determining its DPGR for the taxable year. Likewise, to the extent that a distribution of property to a partner is treated under section 751(b) as a sale or exchange of property between the partnership and the distributee partner, and any property deemed sold or exchanged would give rise to DPGR if sold or exchanged by the partnership, the deemed sale or exchange of the property must be taken into account in determining the partnership's and distributee partner's DPGR. See § 1.751–1(b).

(f) *Section 199(d)(1)(B) wage limitation and tiered structures*—(1) *In general.* If a pass-thru entity owns an interest, directly or indirectly, in one or more pass-thru entities, the wage limitation of section 199(d)(1)(B) must be applied at each tier (that is, separately for each entity). Thus, at each tier, the owner of a pass-thru entity calculates the amounts described in sections 199(d)(1)(B)(i) (allocable share) and 199(d)(1)(B)(ii) (twice the applicable percentage of QPAI from that entity) separately with regard to its interest in that pass-thru entity.

(2) *Share of W–2 wages.* For purposes of section 199(d)(1)(B)(i) and section 199(b), the W–2 wages of the owner of an interest in a pass-thru entity (upper-tier entity) that owns an interest in one or more pass-thru entities (lower-tier entities) are equal to the sum of the owner's allocable share of W–2 wages of the upper-tier entity, as limited in accordance with section 199(d)(1)(B), and the owner's own W–2 wages. The upper-tier entity's W–2 wages are equal to the sum of the upper-tier entity's allocable share of W–2 wages of the next lower-tier entity, as limited in accordance with section 199(d)(1)(B), and the upper-tier entity's own W–2 wages. The W–2 wages of each lower-tier entity in a tiered structure, in turn, is computed as described in the preceding sentence. Although all wages paid during that taxable year are taken into account in computing QPAI, only the W–2 wages as described in § 1.199–2 are taken into account in computing the W–2 wage limitation.

(3) *Example.* The following example illustrates the application of this paragraph (f). Assume that each partnership and each partner (whether or not an individual) is a calendar year taxpayer. The example is as follows:

Example. (i) In 2010, A, an individual, owns a 50% interest in a partnership, UTP, which in turn owns a 50% interest in another partnership, LTP. All partnership items are allocated in proportion to these ownership percentages. Both partnerships are eligible for and use the small business simplified overall method under § 1.199–4(f). LTP has QPAI of $400 ($900 DPGR—$450 CGS (which includes W–2 wages of $100)—$50 other deductions). Before taking into account its distributive share from LTP, UTP has QPAI of ($500) ($500 DPGR—$500 CGS (which includes W–2 wages of $200)—$500 other deductions). UTP's distributive share of LTP's QPAI is $200.

(ii) UTP's share of LTP's W–2 wages for purposes of the section 199(d)(1)(B) limitation is $36, the lesser of $50 (UTP's allocable share of LTP's W–2 wages paid) or $36 (2 × ($200 QPAI × .09)). After taking into account its distributive share from LTP, UTP has QPAI of ($300) and W–2 wages of $236. A's distributive share of UTP's QPAI is ($150). A's limitation under section 199(d)(1)(B) with respect to A's interest in UTP is $0, the lesser of $118 (A's allocable share of UTP's W–2 wages paid) or $0 (because A's share of QPAI, ($150), is less than zero).

(g) *No attribution of qualified activities.* Except as provided in § 1.199–3(h)(7) regarding certain qualifying oil and gas partnerships and § 1.199–3(h)(8) regarding EAG partnerships, for purposes of section 199, an owner of a pass-thru entity is not treated as conducting the qualified production activities of the pass-thru entity, and vice versa. This rule applies to all partnerships, including partnerships that have elected out of subchapter K under section 761(a). Accordingly, if a partnership MPGE QPP within the United States, or otherwise produces a qualified film or utilities in the United States, and distributes or leases, rents, licenses, sells, exchanges, or otherwise disposes of the property to a partner who then leases, rents, licenses, sells, exchanges, or otherwise disposes of the property, the partner's gross receipts from this latter lease, rental, license, sale, exchange, or other disposition are not treated as DPGR under § 1.199–3. In addition, if a partner MPGE QPP within the United States, or otherwise produces a qualified film or utilities in the United States, and contributes or leases, rents, licenses, sells, exchanges, or otherwise disposes of the property to a partnership which then leases, rents, licenses, sells, exchanges, or otherwise disposes of the property, the partnership's gross receipts from this latter disposition are not treated as DPGR under § 1.199–3.

§ 1.199–6 Agricultural and horticultural cooperatives.

(a) *In general.* This section applies to a cooperative to which Part I of

subchapter T of the Internal Revenue Code applies and its patrons if the cooperative has manufactured, produced, grown, or extracted (MPGE) (as defined in § 1.199–3(d)) in whole or significant part (as defined in § 1.199–3(f)) within the United States (as defined in § 1.199–3(g)) any agricultural or horticultural product, or has marketed agricultural or horticultural products. For this purpose, agricultural or horticultural products also include fertilizer, diesel fuel, and other supplies used in agricultural or horticultural production. If any amount of a patronage dividend or per-unit retain allocation received by a patron is allocable to the qualified production activities income (QPAI) (as defined in § 1.199–1(c)) of the cooperative, would be allowable as a deduction under § 1.199–1(a) (section 199 deduction) by the cooperative, and is designated as such in a written notice to the patron during the payment period defined under section 1382(d), then such amount is deductible by the patron as a section 199 deduction. For this purpose, patronage dividends and per-unit retain allocations include any advances on patronage or per-unit retains paid in money during the taxable year.

(b) *Written notice to patrons.* In order for a patron to qualify for the section 199 deduction, paragraph (a) of this section requires that the cooperative designate in a written notice the amount of the patron's patronage dividend or per-unit retain allocation that is allocable to QPAI and deductible by the cooperative. This written notice designating the patron's portion of the section 199 deduction must be mailed by the cooperative to its patrons no later than the 15th day of the ninth month following the close of the taxable year. The cooperative may use the same written notice, if any, that it uses to notify patrons of their respective allocations of patronage dividends, or may use a separate timely written notice(s) to comply with this section. The cooperative must report the amount of the patron's section 199 deduction on Form 1099–PATR, ''Taxable Distributions Received from Cooperative,'' issued to the patron.

(c) *Determining cooperative's qualified production activities income.* In determining the portion of the cooperative's QPAI that would be allowable as a section 199 deduction by the cooperative, the cooperative's taxable income is computed without taking into account any deduction allowable under section 1382(b) or (c) (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions) and, in the case of a cooperative engaged in the marketing of agricultural and/or horticultural products, the cooperative is treated as having MPGE in whole or in significant part within the United States any agricultural or horticultural products marketed by the cooperative that its patrons have MPGE.

(d) *Additional rules relating to pass-through of section 199 deduction.* The cooperative may, at its discretion, pass through all, some, or none of the section 199 deduction to its patrons. A cooperative member of a federated cooperative may pass through the section 199 deduction it receives from the federated cooperative to its member patrons. Patrons may claim the section 199 deduction for the taxable year in which they receive the written notice from the cooperative informing them of the section 199 amount without regard to the taxable income limitation under § 1.199–1(a) and (b).

(e) *W–2 wages.* The W–2 wage limitation described in § 1.199–2 shall be applied at the cooperative level whether or not the cooperative chooses to pass through some or all of the section 199 deduction. Any section 199 deduction that has been passed through by a cooperative to its patrons is not subject to the W–2 wage limitation a second time at the patron level.

(f) *Recapture of section 199 deduction.* If the amount of the section 199 deduction that was passed through to patrons exceeds the amount allowable as a section 199 deduction as determined on audit or reported on the amended return, recapture of the excess will occur at the cooperative level.

(g) *Section is exclusive.* This section is the exclusive method for cooperatives and their patrons to compute the amount of the section 199 deduction. Thus, a patron may not deduct any amount with respect to a patronage dividend or a per-unit retain allocation unless the requirements of this section are satisfied.

(h) *No double counting.* A patronage dividend or per-unit retain allocation received by a patron of a cooperative is not QPAI in the hands of the patron.

(i) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) Cooperative X markets corn grown by its members within the United States for sale to retail grocers. For its calendar year ended December 31, 2005, Cooperative X has gross receipts of $1,500,000, all derived from the sale of corn grown by its members. Cooperative X's W–2 wages for 2005 total $500,000. Cooperative X has no other costs. Patron A is a member of Cooperative X. Patron A is a cash basis taxpayer and files Federal income tax returns on a calendar year basis. All corn grown by Patron A in 2005 is sold through Cooperative X and Patron A is eligible to share in patronage dividends paid by Cooperative X for that year.

(ii) Cooperative X is an agricultural cooperative described in paragraph (a) of this section. Accordingly, this section applies to Cooperative X and its patrons and all of Cooperative X's gross receipts from the sale of its patrons' corn qualify as domestic production gross receipts (as defined § 1.199–3(a)). Cooperative X's QPAI under paragraph (c) of this section is $1,000,000. Cooperative X's section 199 deduction for its taxable year 2005 is $30,000 (.03 × $1,000,000). Since this amount is less than 50% of Cooperative X's W–2 wages, the entire amount is deductible.

Example 2. (i) The facts are the same as in *Example 1* except that Cooperative X decides to pass its entire section 199 deduction through to its members. Cooperative X declares a patronage dividend for its 2005 taxable year of $1,000,000, which it pays on March 15, 2006. Pursuant to paragraph (b) of this section, Cooperative X notifies members in written notices which accompany the patronage dividend notification that it is allocating to them the section 199 deduction it is entitled to claim in the taxable year 2005. On March 15, 2006, Patron A receives a $10,000 patronage dividend from Cooperative X. In the notice that accompanies the patronage dividend, Patron A is designated a $300 section 199 deduction. Under paragraph (d) of this section, Patron A may claim a $300 section 199 deduction for the taxable year ending December 31, 2006, without regard to the taxable income limitation under § 1.199–1(a) and (b). Cooperative X must report the amount of Patron A's section 199 deduction on Form 1099–PATR, ''Taxable Distributions Received from Cooperative,'' issued to the Patron A for the calendar year 2006.

(ii) Under section 199(d)(3)(A), Cooperative X is required to reduce its patronage dividend deduction of $1,000,000 by the $30,000 section 199 deduction passed through to members (whether or not Cooperative X pays patronage on book or tax net earnings). As a consequence, Cooperative X is entitled to a patronage dividend deduction for the taxable year ending December 31, 2005, in the amount of $970,000 ($1,000,000 − $30,000) and to a section 199 deduction in the amount of $30,000 ($1,000,000 × .03). Its taxable income for 2005 is $0.

Example 3. (i) The facts are the same as in *Example 1* except that Cooperative X paid out $500,000 to its patrons as advances on expected patronage net earnings. In 2005, Cooperative X pays its patrons a $500,000 ($1,000,000 − $500,000 already paid) patronage dividend in cash or a combination of cash and qualified written notices of allocation. Under sections 199(d)(3)(A) and 1382, Cooperative X is allowed a patronage dividend deduction of $470,000 ($500,000 − $30,000 section 199 deduction), whether patronage net earnings are distributed on book or tax net earnings.

(ii) The patrons will have received a gross amount of $1,000,000 from Cooperative X ($500,000 paid during the taxable year as advances and the additional $500,000 paid as

qualified patronage dividends). If Cooperative X passes through its entire section 199 deduction to its members by providing the notice required by paragraph (b) of this section, the patrons will be allowed a $30,000 section 199 deduction, resulting in a net $970,000 taxable distribution from Cooperative X. Pursuant to paragraph (h) of this section, the $1,000,000 received by the patrons from Cooperative X is not QPAI in the hands of the patrons.

§ 1.199–7 Expanded affiliated groups.

(a) *In general.* All members of an expanded affiliated group (EAG) are treated as a single corporation for purposes of section 199. Notwithstanding the preceding sentence, except as otherwise provided in the Internal Revenue Code and regulations (see, for example, sections 199(c)(7) and 267, § 1.199–3(b), paragraph (a)(3) of this section, and the consolidated return regulations), each member of an EAG is a separate taxpayer that computes its own taxable income or loss, qualified production activites income (QPAI) (as defined in § 1.199–1(c)), and W–2 wages (as defined in § 1.199–2(f)). If members of an EAG are also members of a consolidated group, see paragraph (d) of this section.

(1) *Definition of expanded affiliated group.* An EAG is an affiliated group as defined in section 1504(a), determined by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears and without regard to section 1504(b)(2) and (4).

(2) *Identification of members of an expanded affiliated group*—(i) *In general.* A corporation must determine if it is a member of an EAG on a daily basis.

(ii) *Becoming or ceasing to be a member of an expanded affiliated group.* If a corporation becomes or ceases to be a member of an EAG, the corporation is treated as becoming or ceasing to be a member of the EAG at the end of the day on which its status as a member changes.

(3) *Attribution of activities.* In general, if a member of an EAG (the disposing member) derives gross receipts (as defined in § 1.199–3(c)) from the lease, rental, license, sale, exchange, or other disposition (as defined in § 1.199–3(h)) of qualifying production property (QPP) (as defined in § 1.199–3(i)) that was manufactured, produced, grown or extracted (MPGE) (as defined in § 1.199–3(d)), in whole or in significant part (as defined in § 1.199–3(f)), in the United States (as defined in § 1.199–3(g)), a qualifed film (as defined in § 1.199–3(j)) that was produced in the United States, or electricity, natural gas, or potable water (as defined in § 1.199–3(k)) (collectively, utilities) that was produced in the United States by another member or members of the same EAG, the disposing member is treated as conducting the activities conducted by each other member of the EAG with respect to the QPP, qualified film, or utilities in determining whether its gross receipts are domestic production gross receipts (DPGR) (as defined in § 1.199–3(a)). However, attribution of activities does not apply for purposes of the construction of real property under § 1.199–3(l) or the performance of engineering and architectural services under § 1.199–3(m). A member of an EAG must engage in a construction activity under § 1.199–3(l)(2), provide engineering services under § 1.199–3(m)(2), or provide architectural services under § 1.199–3(m)(3) in order for the member's gross receipts to be derived from construction, engineering, or architectural services.

(4) *Examples.* The following examples illustrate the application of paragraph (a)(3) of this section:

Example 1. Corporations M and N are members of the same EAG. M is engaged solely in the trade or business of manufacturing furniture in the United States that it sells to unrelated persons. N is engaged solely in the trade or business of engraving companies' names on pens and pencils purchased from unrelated persons and then selling the pens and pencils to such companies. If N was not a member of an EAG, its activities would not qualify as MPGE. Accordingly, although M's sales of the furniture qualify as DPGR (assuming all the other requirements of § 1.199–3 are met), N's sales of the engraved pens and pencils do not qualify as DPGR because neither N nor another member of the EAG MPGE the pens and pencils.

Example 2. For the entire 2006 taxable year, Corporations A and B are members of the same EAG. A is engaged solely in the trade or business of manufacturing QPP in the United States. A and B each own 45 percent of partnership C and unrelated persons own the remaining 10 percent. C is engaged solely in the trade or business of manufacturing the same type of QPP in the United States as A. In 2006, B purchases and then resells the QPP manufactured in 2006 by A and C. B also resells QPP it purchases from unrelated persons. If only B's activities were considered, B would not qualify for the deduction under § 1.199–1(a) (section 199 deduction). However, because B is a member of the EAG that includes A, B is treated as conducting A's manufacturing activities in determining whether B's gross receipts are DPGR. C is not a member of the EAG and thus C's MPGE activities are not attributed to B in determining whether B's gross receipts are DPGR. Accordingly, B's gross receipts attributable to its sale of the QPP it purchases from A are DPGR (assuming all the other requirements of § 1.199–3 are met). B's gross receipts attributable to its sale of the QPP it purchases from C and from the unrelated persons are non-DPGR because no member of the EAG MPGE the QPP. If rather than reselling the QPP, B rented the QPP it acquired from A to unrelated persons, B's gross receipts attributable to the rental of the QPP would also be DPGR (assuming all the other requirements of § 1.199–3 are met).

(5) *Anti-avoidance rule.* If a transaction between members of an EAG is engaged in or structured with a principal purpose of qualifying for, or increasing the amount of, the section 199 deduction of the EAG or the portion of the section 199 deduction allocated to one or more members of the EAG, adjustments must be made to eliminate the effect of the transaction on the computation of the section 199 deduction.

(b) *Computation of expanded affiliated group's section 199 deduction*—(1) *In general.* The section 199 deduction for an EAG is determined by aggregating each member's taxable income or loss, QPAI, and W–2 wages. For this purpose, a member's QPAI is determined under § 1.199–1. For purposes of this determination, a member's QPAI may be positive or negative. A member's taxable income or loss and QPAI shall be determined by reference to the member's methods of accounting.

(2) *Net operating loss carryovers.* In determing the taxable income of an EAG, if a member of an EAG has a net operating loss (NOL) carryback or carryover to the taxable year, then the amount of the NOL used to offset taxable income cannot exceed the taxable income of that member.

(c) *Allocation of an expanded affiliated group's section 199 deduction among members of the expanded affiliated group*—(1) *In general.* An EAG's section 199 deduction is allocated among the members of the EAG in proportion to each member's QPAI regardless of whether the EAG member has taxable income or loss or W–2 wages for the taxable year. For this purpose, if a member has negative QPAI, the QPAI of the member shall be treated as zero.

(2) *Use of section 199 deduction to create or increase a net operating loss.* Notwithstanding § 1.199–1(b), which generally prevents the section 199 deduction from creating or increasing an NOL, if a member of an EAG has some or all of the EAG's section 199 deduction allocated to it under paragraph (c)(1) of this section and the amount allocated exceeds the member's taxable income (determined prior to allocation of the section 199 deduction), the section 199 deduction will create an NOL for the member. Similarly, if a member of an EAG, prior to the

allocation of some or all of the EAG's section 199 deduction to the member, has an NOL for the taxable year, the portion of the EAG's section 199 deduction allocated to the member will increase the member's NOL.

(d) *Special rules for members of the same consolidated group*—(1) *Intercompany transactions.* In the case of an intercompany transaction between consolidated group members S and B (intercompany transaction, S, and B as defined in § 1.1502–13(b)(1)), S takes an intercompany transaction into account in computing the section 199 deduction at the same time and in the same proportion as S takes into account the income, gain, deduction, or loss from the intercompany transaction under § 1.1502–13.

(2) *Attribution of activities in the construction of real property and the performance of engineering and architectural services.* Notwithstanding paragraph (a)(3) of this section, a disposing member (as described in such paragraph) is treated as conducting the activities conducted by each other member of the consolidated group with respect to the construction of real property under § 1.199–3(l) and the performance of engineering and architectural services under § 1.199–3(m).

(3) *Application of the simplified deduction method and the small business simplified overall method.* For purposes of applying the simplified deduction method under § 1.199–4(e) and the small business simplified overall method under § 1.199–4(f), a consolidated group determines its QPAI by reference to its members' DPGR, non-DPGR, cost of goods sold (CGS), and all other deductions, expenses, or losses (deductions), determined on a consolidated basis.

(4) *Determining the section 199 deduction*—(i) *Expanded affiliated group consists of consolidated group and non-consolidated group members.* If an EAG includes corporations that are members of the same consolidated group and corporations that are not members of the same consolidated group, in computing the taxable income of the EAG, the consolidated taxable income or loss, QPAI, and W–2 wages of the consolidated group, not the separate taxable income or loss, QPAI, and W–2 wages of the members of the consolidated group, are aggregated with the taxable income or loss, QPAI, and W–2 wages of the non-consolidated group members. For example, if A, B, C, S1, and S2 are members of the same EAG, and A, S1, and S2 are members of the same consolidated group (the A consolidated group), the A consolidated group is treated as one member of the EAG. Accordingly, the EAG is considered to have three members, the A consolidated group, B, and C. The consolidated taxable income or loss, QPAI, and W–2 wages of the A consolidated group are aggregated with the taxable income or loss, QPAI, and W–2 wages of B and C in determining the EAG's section 199 deduction.

(ii) *Expanded affiliated group consists only of members of a single consolidated group.* If all the members of an EAG are members of the same consolidated group, the consolidated group's section 199 deduction is determined by reference to the consolidated group's consolidated taxable income or loss, QPAI, and W–2 wages, not the separate taxable income or loss, QPAI, and W–2 wages of its members.

(5) *Allocation of the section 199 deduction of a consolidated group among its members.* The section 199 deduction of a consolidated group (or the section 199 deduction allocated to a consolidated group that is a member of an EAG) must be allocated to the members of the consolidated group in proportion to each consolidated group member's QPAI, regardless of whether the consolidated group member has separate taxable income or loss or W–2 wages for the taxable year. For purposes of allocating the section 199 deduction of a consolidated group among its members, any redetermination of a corporation's receipts from an intercompany transaction as DPGR or non-DPGR or as non-receipts, and any redetermination of a corporation's CGS or other deductions from an intercompany transaction as either allocable to or not allocable to DPGR under § 1.1502–13(c)(1)(i) or (c)(4) is not taken into account. Also, for purposes of this allocation, if a consolidated group member has negative QPAI, the QPAI of the member shall be treated as zero.

(e) *Examples.* The following examples illustrate the application of paragraphs (b), (c), and (d) of this section:

Example 1. Corporations X and Y are members of the same EAG but are not members of a consolidated group. X and Y each use the section 861 method described in § 1.199–4(d) for allocating and apportioning their deductions. X incurs $5,000 in costs in manufacturing a machine, all of which are capitalized. X is entitled to a $1,000 depreciation deduction for the machine in the current taxable year. X rents the machine to Y for $1,500. Y uses the machine in manufacturing QPP within the United States. Y incurs $1,400 of CGS in manufacturing the QPP. Y sells the QPP to unrelated persons for $7,500. Pursuant to section 199(c)(7) and § 1.199–3(b), X's rental income is non-DPGR (and its related costs are not attributable to DPGR). Accordingly, Y has $4,600 of QPAI (Y's $7,500 DPGR received from unrelated persons − Y's $1,400 CGS allocable to such receipts − Y's $1,500 of rental expense), X has $0 of QPAI, and the EAG has $4,600 of QPAI.

Example 2. The facts are the same as in *Example 1* except that X and Y are members of the same consolidated group. Pursuant to section 199(c)(7) and § 1.199–3(b), X's rental income ordinarily would not be DPGR (and its related costs would not be allocable to DPGR). However, because X and Y are members of the same consolidated group, § 1.1502–13(c)(1)(i) provides that the separate entity attributes of X's income or Y's expenses, or both X's income and Y's expenses, may be redetermined in order to produce the same effect as if X and Y were divisions of a single corporation. If X and Y were divisions of a single corporation, X and Y would have QPAI of $5,100 ($7,500 DPGR received from unrelated persons − $1,400 CGS allocable to such receipts − $1,000 depreciation deduction). To obtain this same result for the consolidated group, X's rental income is recharacterized as DPGR, which results in the consolidated group having $9,000 of DPGR (the sum of Y's DPGR of $7,500 + X's DPGR of $1,500) and $3,900 of costs allocable to DPGR (the sum of Y's $1,400 CGS + Y's $1,500 rental expense + X's $1,000 depreciation expense). For purposes of determining how much of the consolidated group's section 199 deduction is allocated to X and Y, pursuant to paragraph (d)(5) of this section, the redetermination of X's rental income as DPGR under § 1.1502–13(c)(1)(i) is not taken into account (X's costs are considered to be allocable to DPGR because they are allocable to the consolidated group deriving DPGR). Accordingly, for this purpose, X is deemed to have ($1,000) of QPAI (X's $0 DPGR − X's $1,000 depreciation deduction). Because X is deemed to have negative QPAI, also pursuant to paragraph (d)(5) of this section, X's QPAI is treated as zero. Y has $4,600 of QPAI (Y's $7,500 DPGR − Y's $1,400 CGS allocable to such receipts − Y's $1,500 of rental expense). Accordingly, X is allocated $0/($0 + $4,600) of the consolidated group's section 199 deduction and Y is allocated $4,600/($0 + $4,600) of the consolidated group's section 199 deduction.

Example 3. (i) *Facts.* Corporations A and B are the only two members of an EAG but are not members of a consolidated group. A and B each file Federal income tax returns on a calendar year basis. The average annual gross receipts of the EAG are less than or equal to $25,000,000 and A and B each use the simplified deduction method under § 1.199–4(e). In 2006, A MPGE televisions within the United States. A has $10,000,000 of DPGR from sales of televisions to unrelated persons and $2,000,000 of DPGR from sales of televisions to B. In addition, A has gross receipts from computer consulting services with unrelated persons of $3,000,000. A has CGS of $6,000,000. A is able to determine from its books and records that $4,500,000 of its CGS are attributable to televisions sold to unrelated persons and $1,500,000 are attributable to televisions sold to B (see § 1.199–4(b)(2)). A has other deductions of

$4,000,000. A has no other items of income, gain, or deductions. In 2006, B sells the televisions it purchased from A to unrelated persons for $4,100,000 and pays $100,000 for administrative services performed in 2006. B has no other items of income, gain, or deductions.

(ii) *QPAI.* (A) *A's QPAI.* In order to determine A's QPAI, A subtracts its $6,000,000 CGS from its $12,000,000 DPGR. Under the simplified deduction method, A then apportions its remaining $4,000,000 of deductions to DPGR in proportion to the ratio of its DPGR to total gross receipts. Thus, of A's $4,000,000 of deductions, $3,200,000 is apportioned to DPGR ($4,000,000 × $12,000,000/$15,000,000). Accordingly, A's QPAI is $2,800,000 ($12,000,000 DPGR − $6,000,000 CGS − $3,200,000 deductions apportioned to its DPGR).

(B) *B's QPAI.* Although B did not MPGE the televisions it sold, pursuant to paragraph (a)(3) of this section, B is treated as conducting A's MPGE of the televisions in determining whether B's gross receipts are DPGR. Thus, B has $4,100,000 of DPGR. In order to determine B's QPAI, B subtracts its $2,000,000 CGS from its $4,100,000 DPGR. Under the simplified deduction method, B then apportions its remaining $100,000 of deductions to DPGR in proportion to the ratio of its DPGR to total gross receipts. Thus, because B has no other gross receipts, all of B's $100,000 of deductions is apportioned to DPGR ($100,000 × $4,100,000/$4,100,000). Accordingly, B's QPAI is $2,000,000 ($4,100,000 DPGR − $2,000,000 CGS − $100,000 deductions apportioned to its DPGR).

Example 4. (i) *Facts.* The facts are the same as in *Example 3* except that A and B are members of the same consolidated group, B does not sell the televisions purchased from A until 2007, and B's $100,000 paid for administrative services are paid in 2007 for services performed in 2007. In addition, in 2007, A has $3,000,000 in gross receipts from computer consulting services with unrelated persons and $1,000,000 in related deductions.

(ii) *Consolidated group's 2006 QPAI.* The consolidated group's DPGR and total gross receipts in 2006 are $10,000,000 and $13,000,000, respectively, because, pursuant to paragraph (d)(1) of this section and § 1.1502–13, the sale of the televisions from A to B is not taken into account in 2006. In order to determine the consolidated group's QPAI, the consolidated group subtracts its $4,500,000 CGS from the televisions sold to unrelated persons from its $10,000,000 DPGR. Under the simplified deduction method, the consolidated group apportions its remaining $4,000,000 of deductions to DPGR in proportion to the ratio of its DPGR to total gross receipts. Thus, $3,076,923 ($4,000,000 × $10,000,000/$13,000,000) is allocated to DPGR. Accordingly, the consolidated group's QPAI for 2006 is $2,423,077 ($10,000,000 DPGR − $4,500,000 CGS − $3,076,923 deductions apportioned to its DPGR).

(iii) *Allocation of consolidated group's 2006 section 199 deduction to its members.* Because B's only activity during 2006 is the purchase of televisions from A, B has no DPGR or deductions and thus, no QPAI, in 2006. Accordingly, the entire section 199 deduction in 2006 for the consolidated group will be allocated to A.

(iv) *Consolidated group's 2007 QPAI.* Pursuant to paragraph (d)(1) of this section and § 1.1502–13(c), A's sale of televisions to B in 2006 is taken into account in 2007 when B sells the televisions to unrelated persons. However, because A and B are members of a consolidated group, § 1.1502–13(c)(1)(i) provides that the separate entity attributes of A's income or B's expenses, or both A's income and B's expenses, may be redetermined in order to produce the same effect as if A and B were divisions of a single corporation. Accordingly, A's $2,000,000 of gross receipts are redetermined to be non-DPGR and non-receipts and B's $2,000,000 CGS are redetermined to be not allocable to DPGR. Notwithstanding that A's receipts are redetermined to be non-DPGR and non-receipts, A's CGS are still considered to be allocable to DPGR because they are allocable to the consolidated group deriving DPGR. Accordingly, the consolidated group's DPGR in 2007 is $4,100,000 from B's sales of televisions, and its total receipts are $7,100,000 ($4,100,000 DPGR plus $3,000,000 non-DPGR from A's computer consulting services). To determine the consolidated group's QPAI, the consolidated group subtracts A's $1,500,000 CGS from the televisions sold to B from its $4,100,000 DPGR. Under the simplified deduction method, the consolidated group apportions its remaining $1,100,000 of deductions ($1,000,000 from A and $100,000 from B) to DPGR in proportion to the consolidated group's ratio of its DPGR to total gross receipts. Thus, $635,211 ($1,100,000 × $4,100,000/$7,100,000) is allocated to DPGR. Accordingly, the consolidated group's QPAI for 2007 is $1,964,789 ($4,100,000 DPGR − $1,500,000 CGS − $635,211 deductions apportioned to its DPGR), the same QPAI that would result if A and B were divisions of a single corporation.

(v) *Allocation of consolidated group's 2007 section 199 deduction to its members.* (A) *A's QPAI.* For purposes of allocating the consolidated group's section 199 deduction to its members, pursuant to paragraph (d)(5) of this section, the redetermination of A's $2,000,000 in receipts as non-DPGR and non-receipts is disregarded. Accordingly, for this purpose, A's DPGR is $2,000,000 (receipts from the sale of televisions to B taken into account in 2007) and its total receipts are $5,000,000 ($2,000,000 DPGR + $3,000,000 non-DPGR from its computer consulting services). In determining A's QPAI, A subtracts its $1,500,000 CGS from the televisions sold to B from its $2,000,000 DPGR. Under the simplified deduction method, A apportions its remaining $1,000,000 of deductions in proportion to the ratio of its DPGR to total receipts. Thus, $400,000 ($1,000,000 × $2,000,000/ $5,000,000) is allocated to DPGR. Thus, A's QPAI is $100,000 ($2,000,000 DPGR − $1,500,000 CGS − $400,000 deductions allocated to its DPGR).

(B) *B's QPAI.* B's DPGR and its total gross receipts are each $4,100,000. For purposes of allocating the consolidated group's section 199 deduction to its members, pursuant to paragraph (d)(5) of this section, the redetermination of B's $2,000,000 CGS as not allocable to DPGR is disregarded. In determining B's QPAI, B subtracts its $2,000,000 CGS from the televisions purchased from A from its $4,100,000 DPGR. Under the simplified deduction method, B apportions its remaining $100,000 deductions in proportion to the ratio of its DPGR to total receipts. Thus, all $100,000 ($100,000 × $4,100,000/$4,100,000) is allocated to DPGR. Thus, B's QPAI is $2,000,000 ($4,100,000 DPGR − $2,000,000 CGS − $100,000 deductions allocated to its DPGR).

(C) *Allocation to A and B.* Pursuant to paragraph (d)(5) of this section, the consolidated group's section 199 deduction for 2007 is allocated $100,000/($100,000 + $2,000,000) to A and $2,000,000/($100,000 + $2,000,000) to B.

Example 5. Corporations S and B are members of the same consolidated group. In 2006, S manufactures office furniture for B to use in B's corporate headquarters and S sells the office furniture to B. S and B have no other activities in the taxable year. If S and B were not members of a consolidated group, S's gross receipts from the sale of the office furniture to B would be DPGR (assuming all the other requirements of § 1.199–3 are met) and S's CGS or other deductions, expenses, or losses from the sale to B would be allocable to S's DPGR. However, because S and B are members of a consolidated group, the separate entity attributes of S's income or B's expenses, or both S's income and B's expenses, may be redetermined under § 1.1502–13(c)(1)(i) or (c)(4) in order to produce the same effect as if S and B were divisions of a single corporation. If S and B were divisions of a single corporation, there would be no DPGR with respect to the office furniture because there would be no lease, rental, license, sale, exchange, or other disposition of the furniture by the single corporation (and no CGS or other deductions allocable to DPGR). Thus, in order to produce the same effect as if S and B were divisions of a single corporation, S's gross receipts are redetermined as non-DPGR. Accordingly, the consolidated group has no DPGR (and no CGS or other deductions allocated or apportioned to DPGR) and receives no section 199 deduction in 2006.

Example 6. Corporations X, Y, and Z are members of the same EAG but are not members of a consolidated group. X, Y, and Z each files Federal income tax returns on a calendar year basis. Assume that the EAG has W–2 wages in excess of the section 199(b) wage limitation. Prior to 2006, X had no taxable income or loss. In 2006, X has $0 of taxable income and $2,000 of QPAI, Y has $4,000 of taxable income and $3,000 of QPAI, and Z has $4,000 of taxable income and $5,000 of QPAI. Accordingly, the EAG has taxable income of $8,000, the sum of X's taxable income of $0, Y's taxable income of $4,000, and Z's taxable income of $4,000. The EAG has QPAI of $10,000, the sum of X's QPAI of $2,000, Y's QPAI of $3,000, and Z's QPAI of $5,000. Because X's, Y's, and Z's taxable years all began in 2006, the transition percentage under section 199(a)(2) is 3

percent. Thus, the EAG's section 199 deduction for 2006 is $240 (3% of the lesser of the EAG's taxable income of $8,000 or the EAG's QPAI of $10,000). Pursuant to paragraph (c)(1) of this section, the $240 section 199 deduction is allocated to X, Y, and Z in proportion to their respective amounts of QPAI, that is $48 to X ($240 × $2,000/$10,000), $72 to Y ($240 × $3,000/$10,000), and $120 to Z ($240 × $5,000/$10,000). Although X's taxable income for 2006 determined prior to allocation of a portion of the EAG's section 199 deduction to it was $0, pursuant to paragraph (c)(2) of this section X will have an NOL for 2006 equal to $48. Because X's NOL for 2006 cannot be carried back to a previous taxable year, X's NOL carryover to 2007 will be $48.

(f) *Allocation of income and loss by a corporation that is a member of the expanded affiliated group for only a portion of the year*—(1) *In general.* A corporation that becomes or ceases to be a member of an EAG during its taxable year must allocate its taxable income or loss, QPAI, and W–2 wages between the portion of the taxable year that it is a member of the EAG and the portion of the taxable year that it is not a member of the EAG. In general, this allocation of items must be made by using the pro rata allocation method described in paragraph (f)(1)(i) of this section. However, a corporation may elect to use the section 199 closing of the books method described in paragraph (f)(1)(ii) of this section. Neither the pro rata allocation method nor the section 199 closing of the books method is a method of accounting.

(i) *Pro rata allocation method.* Under the pro rata allocation method, an equal portion of a corporation's taxable income or loss, QPAI, and W–2 wages for the taxable year is assigned to each day of the corporation's taxable year. Those items assigned to those days that the corporation was a member of the EAG are then aggregated.

(ii) *Section 199 closing of the books method.* Under the section 199 closing of the books method, a corporation's taxable income or loss, QPAI, and W–2 wages for the period during which the corporation was a member of an EAG are computed by treating the corporation's taxable year as two separate taxable years, the first of which ends at the close of the day on which the corporation's status as a member of the EAG changes and the second of which begins at the beginning of the day after the corporation's status as a member of the EAG changes.

(iii) *Making the section 199 closing of the books election.* A corporation makes the section 199 closing of the books election by making the following statement: ''The section 199 closing of the books election is hereby made with respect to [insert name of corporation and its employer identification number] with respect to the following periods [insert dates of the two periods between which items are allocated pursuant to the closing of the books method].'' The statement must be filed with the corporation's timely filed (including extensions) Federal income tax return for the taxable year that includes the periods that are subject to the election. Once made, a section 199 closing of the books election is irrevocable.

(2) *Coordination with rules relating to the allocation of income under § 1.1502–76(b).* If § 1.1502–76(b) (relating to items included in a consolidated return) applies to a corporation that is a member of an EAG, any allocation of items required under this paragraph (f) is made only after the allocation of the corporation's items pursuant to § 1.1502–76(b).

(g) *Total section 199 deduction for a corporation that is a member of an expanded affiliated group for some or all of its taxable year*—(1) *Member of the same expanded affiliated group for the entire taxable year.* If a corporation is a member of the same EAG for its entire taxable year, the corporation's section 199 deduction for the taxable year is the amount of the section 199 deduction allocated to the corporation by the EAG under paragraph (c)(1) of this section.

(2) *Member of the expanded affiliated group for a portion of the taxable year.* If a corporation is a member of an EAG only for a portion of its taxable year and is either not a member of any EAG or is a member of another EAG, or both, for another portion of the taxable year, the corporation's section 199 deduction for the taxable year is the sum of its section 199 deductions for each portion of the taxable year.

(3) *Example.* The following example illustrates the application of paragraphs (f) and (g) of this section:

Example. Corporations X and Y, calendar year corporations, are members of the same EAG for the entire 2005 taxable year. Corporation Z, also a calendar year corporation, is a member of the EAG of which X and Y are members for the first half of 2005 and not a member of any EAG for the second half of 2005. During the 2005 taxable year, Z does not join in the filing of a consolidated return. Z makes a section 199 closing of the books election. As a result, Z has $80 of taxable income and $100 of QPAI that is allocated to the first half of the taxable year and a $150 taxable loss and ($200) of QPAI that is allocated to the second half of the taxable year. Taking into account Z's taxable income, QPAI, and W–2 wages allocated to the first half of the taxable year pursuant to the section 199 closing of the books election, the EAG has positive taxable income and QPAI for the taxable year and W–2 wages in excess of the section 199(b) wage limitation. Because the EAG has both positive taxable income and QPAI and sufficient W–2 wages, and because Z has positive QPAI for the first half of the year, a portion of the EAG's section 199 deduction is allocated to Z. Because Z has negative QPAI for the second half of the year, Z is allowed no section 199 deduction for the second half of the taxable year. Thus, despite the fact that Z has a $70 taxable loss and ($100) of QPAI for the entire 2005 taxable year, Z is entitled to a section 199 deduction for the taxable year equal to the section 199 deduction allocated to Z as a member of the EAG.

(h) *Computation of section 199 deduction for members of an expanded affiliated group with different taxable years*—(1) *In general.* If members of an EAG have different taxable years, in determining the section 199 deduction of a member (the computing member), the computing member is required to take into account the taxable income or loss, QPAI, and W–2 wages of each group member that are both—

(i) Attributable to the period that the member of the EAG and the computing member are both members of the EAG; and

(ii) Taken into account in a taxable year that begins after the effective date of section 199 and ends with or within the taxable year of the computing member with respect to which the section 199 deduction is computed.

(2) *Example.* The following example illustrates the application of this paragraph (h):

Example. (i) Corporations X, Y, and Z are members of the same EAG. Neither X, Y, nor Z is a member of a consolidated group. X and Y are calendar year taxpayers and Z is a June 30 fiscal year taxpayer. Each corporation has taxable income that exceeds its QPAI and has sufficient W–2 wages to avoid the limitation under section 199(b). For its taxable year ending June 30, 2005, Z's QPAI is $4,000. For the taxable year ending December 31, 2005, X's QPAI is $8,000 and Y's QPAI is ($6,000). For its taxable year ending June 30, 2006, Z's QPAI is $2,000.

(ii) Because Z's taxable year ending June 30, 2005, began on July 1, 2004, prior to the effective date of section 199, Z is not allowed a section 199 deduction for its taxable year ending June 30, 2005.

(iii) In computing X's and Y's respective section 199 deductions for their taxable years ending December 31, 2005, Z's items from its taxable year ending June 30, 2005, are not taken into account because Z's taxable year began before the effective date of section 199. Instead, only X's and Y's taxable income, QPAI, and W–2 wages from their respective taxable years ending December 31, 2005, are aggregated. The EAG's QPAI for this purpose is $2,000 (X's QPAI of $8,000 + Y's QPAI of ($6,000)). Because the taxable years of the computing members, X and Y, began in 2005, the transition percentage under section

199(a)(2) is 3 percent. Accordingly, the EAG's section 199 deduction is $60 ($2,000 × .03). The $60 deduction is allocated to each of X and Y in proportion to their respective QPAI as a percentage of the QPAI of each member of the EAG that was taken into account in computing the EAG's section 199 deduction. Pursuant to paragraph (c)(1) of this section, in allocating the section 199 deduction between X and Y, because Y's QPAI is negative, Y's QPAI is treated as being $0. Accordingly, X's section 199 deduction for its taxable year ending December 31, 2005, is $60 ($60 × $8,000/($8,000 + $0)). Y's section 199 deduction for its taxable year ending December 31, 2005, is $0 ($60 × $0/($8,000 + $0)).

(iv) In computing Z's section 199 deduction for its taxable year ending June 30, 2006, X's and Y's items from their respective taxable years ending December 31, 2005, are taken into account. Therefore, X's and Y's taxable income or loss, QPAI, and W–2 wages from their taxable years ending December 31, 2005, are aggregated with Z's taxable income or loss, QPAI, and W–2 wages from its taxable year ending June 30, 2006. The EAG's QPAI is $4,000 (X's QPAI of $8,000 + Y's QPAI of ($6,000) + Z's QPAI of $2,000). Because the taxable year of the computing member, Z, began in 2005, the transition percentage under section 199(a)(2) is 3 percent. Accordingly, the EAG's section 199 deduction is $120 ($4,000 × .03). A portion of the $120 deduction is allocated to Z in proportion to its QPAI as a percentage of the QPAI of each member of the EAG that was taken into account in computing the EAG's section 199 deduction. Pursuant to paragraph (c)(1) of this section, in allocating a portion of the $120 deduction to Z, because Y's QPAI is negative, Y's QPAI is treated as being $0. Z's section 199 deduction for its taxable year ending June 30, 2006, is $24 ($120 × $2,000/($8,000 + $0 + $2,000)).

§ 1.199–8 Other rules.

(a) *Individuals.* In the case of an individual, the deduction under § 1.199–1(a) (section 199 deduction) is equal to the applicable percentage of the lesser of the taxpayer's qualified production activities income (QPAI) (as defined in § 1.199–1(c)) for the taxable year, or adjusted gross income (AGI) for the taxable year determined after applying sections 86, 135, 137, 219, 221, 222, and 469, and without regard to section 199.

(b) *Trade or business requirement.* Section 1.199–3 is applied by taking into account only items that are attributable to the actual conduct of a trade or business.

(c) *Coordination with alternative minimum tax.* For purposes of determining alternative minimum taxable income (AMTI) under section 55, a taxpayer that is not a corporation may deduct an amount equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of the taxpayer's QPAI for the taxable year, or the taxpayer's taxable income for the taxable year, determined without regard to the section 199 deduction (or in the case of an individual, AGI). For purposes of determining AMTI in the case of a corporation (including a corporation subject to tax under section 511(a)), a taxpayer may deduct an amount equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of the taxpayer's QPAI for the taxable year, or the taxpayer's AMTI for the taxable year, determined without regard to the section 199 deduction. For purposes of computing AMTI, QPAI is determined without regard to any adjustments under sections 56 through 59. In the case of an individual or a trust, AGI and taxable income are also determined without regard to any adjustments under sections 56 through 59. The amount of the deduction allowable under this paragraph (c) for any taxable year cannot exceed 50 percent of the W–2 wages of the employer for the taxable year (as determined under § 1.199–2).

(d) *Nonrecognition transactions*—(1) *In general.* Except as provided for an expanded affiliated group (EAG) (as defined in § 1.199–7) and EAG partnerships (as defined in § 1.199–3(h)(8)), if property is transferred by the taxpayer to an entity in a transaction to which section 351 or 721 applies, then whether the gross receipts derived by the entity are domestic production gross receipts (DPGR) (as defined in § 1.199–3) shall be determined based on the activities performed by the entity without regard to the activities performed by the taxpayer prior to the contribution of the property to the entity. Except as provided in § 1.199–3(h)(7) and (8) (exceptions for certain oil and gas partnerships and EAG partnerships), if property is transferred by a partnership to a partner in a transaction to which section 731 applies, then whether gross receipts derived by the partner are DPGR shall be determined based on the activities performed by the partner without regard to the activities performed by the partnership before the distribution of the property to the partner.

(2) *Section 1031 exchanges.* If a taxpayer exchanges property for replacement property in a transaction to which section 1031 applies, then whether the gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of the replacement property are DPGR shall be determined based solely on the activities performed by the taxpayer with respect to the replacement property.

(3) *Section 381 transactions.* If a corporation (the acquiring corporation) acquires the assets of another corporation (the target corporation) in a transaction to which section 381(a) applies, the acquiring corporation shall be treated as performing those activities of the target corporation with respect to the acquired assets of the target corporation. Therefore, to the extent that the acquired assets of the target corporation would have given rise to DPGR if leased, rented, licensed, sold, exchanged, or otherwise disposed of by the target corporation, then the assets will give rise to DPGR if leased, rented, licensed, sold, exchanged, or otherwise disposed of by the acquiring corporation.

(e) *Taxpayers with a 52–53 week taxable year.* For purposes of applying § 1.441–2(c)(1) in the case of a taxpayer using a 52–53 week taxable year, any reference in section 199(a)(2) (the phase-in rule), §§ 1.199–1 through 1.199–7, and this section to a taxable year beginning after a particular calendar year means a taxable year beginning after December 31st of that year. Similarly, any reference to a taxable year beginning in a particular calendar year means a taxable year beginning after December 31st of the preceding calendar year. For example, a 52–53 week taxable year that begins on December 26, 2004, is deemed to begin on January 1, 2005, and the transition percentage for that taxable year is 3 percent.

(f) *Section 481(a) adjustments.* For purposes of determining QPAI, a section 481(a) adjustment, whether positive or negative, taken into account during the taxable year that is solely attributable to either gross receipts, cost of goods sold (CGS), or deductions, expenses, or losses (deductions) must be allocated or apportioned in the same manner as the gross receipts, CGS, or deductions to which it is attributable. See §§ 1.199–1(d), 1.199–4(b), and 1.199–4(c) for rules related to the allocation and apportionment of gross receipts, CGS, and deductions. For example, if a taxpayer changes its method of accounting for inventories from the last-in, first-out (LIFO) method to the first-in, first-out (FIFO) method, the taxpayer is required to allocate the resulting section 481(a) adjustment, whether positive or negative, in the same manner as the CGS computed for the taxable year with respect to those inventories. If a section 481(a) adjustment is not solely attributable to either gross receipts, CGS, or deductions (for example, the

taxpayer changes its overall method of accounting from an accrual method to the cash method and the section 481(a) adjustment cannot be specifically identified with either gross receipts, CGS, or deductions), the section 481(a) adjustment, whether positive or negative, must be attributed to, or among, gross receipts, CGS, or deductions using any reasonable method that is satisfactory to the Secretary and allocated or apportioned in the same manner as the gross receipts, CGS, or deductions to which it is attributable. Factors taken into consideration in determining whether the method is reasonable include whether the taxpayer uses the most accurate information available; the relationship between the section 481(a) adjustment and the apportionment base chosen; the accuracy of the method chosen as compared with other possible methods; and the time, burden, and cost of using various methods. If a section 481(a) adjustment is spread over more than one taxable year, a taxpayer must attribute the section 481(a) adjustment among gross receipts, CGS, or deductions, as applicable, in the same manner for each taxable year within the spread period. For example, if a taxpayer, using a reasonable method, determines that a section 481(a) adjustment that is required to be spread over four taxable years should be attributed entirely to gross receipts, then the taxpayer must attribute the section 481(a) adjustment entirely to gross receipts in each of the four taxable years of the spread period.

(g) *Effective date.* The final regulations will be applicable to taxable years beginning after December 31, 2004. In the case of pass-thru entities described in § 1.199–5, the final regulations will be applicable to taxable years of pass-thru entities beginning after December 31, 2004. Until the date final regulations are published in the **Federal Register**, taxpayers may rely on the interim guidance on section 199 as set forth in Notice 2005–14 (2005–7 I.R.B. 498) (see § 601.601(d)(2) of this chapter), as well as the proposed regulations under §§ 1.199–1 through 1.199–7, and this section. For this purpose, if the proposed regulations and Notice 2005–14 include different rules for the same particular issue, then the taxpayer may rely on either the rule set forth in the proposed regulations or the rule set forth in Notice 2005–14. However, if the proposed regulations include a rule that was not included in Notice 2005–14, taxpayers are not permitted to rely on the absence of a rule to apply a rule contrary to the proposed regulations.

Kevin M. Brown,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–21484 Filed 11–3–05; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Airplane Performance and Handling Qualities in Icing Conditions; Proposed Advisory Circular 25.21–1X, Performance and Handling Characteristics in the Icing Conditions Specified in Part 25, Appendix C; Proposed Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 2005–22840; Notice No. 05–10]

RIN 2120–AI14

Airplane Performance and Handling Qualities in Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to introduce new airworthiness standards to evaluate the performance and handling characteristics of transport category airplanes in icing conditions. This proposed action would improve the level of safety for new airplane designs when operating in icing conditions, and would harmonize the U.S. and European airworthiness standards for flight in icing conditions.

DATES: Send your comments on or before February 2, 2006.

ADDRESSES: You may send comments identified by Docket Number FAA–2005–22840 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 Regulations and Policies Web site: Go to *http://www.faa.gov/regulations_policies/* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone: (425) 227–1129; fax: (425) 227–1149, e-mail: *don.stimson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment of behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. This regulation is within the scope of that authority because it prescribes new safety standards for the design of transport category airplanes.

Organization of This NPRM

Discussion of this proposal is organized under the headings listed below. Whenever there is a reference to a document being included in the docket for this NPRM, the docket referred to is Docket Number FAA–2005–22840. A list of acronyms used is included in an appendix located at the end of the preamble material, between the regulatory evaluation and the text of the proposed amendments. Unless stated otherwise, rule sections referenced in this NPRM are part of Title 14, Code of Federal Regulations (14 CFR).

I. Executive Summary

If adopted, this rulemaking would revise certain sections of part 25 of Title

14 Code of Federal Regulations (14 CFR). Part 25 contains the airworthiness standards for type certification of transport category airplanes, but it does not currently include specific requirements for airplane performance or handling qualities for flight in icing conditions. Although part 25 requires airplanes with approved ice protection features to be able to operate safely in icing conditions, there is no standard set of criteria defining what ''to safely operate'' in icing conditions means in terms of airplane performance and handling qualities. Further, because the existing icing regulations only address airplanes with ice protection provisions, it is unclear what requirements apply in cases where the applicant is seeking to have an airplane without an ice protection system certificated for flight in icing conditions.

This notice proposes to amend part 25 by adding a comprehensive set of airworthiness requirements that must be met to receive certification approval for flight in icing conditions, including specific performance and handling qualities requirements, and the ice accretion (that is, the size, shape, location, and texture of the ice) that must be considered for each phase of flight. These proposed revisions would ensure that minimum operating speeds determined during the certification of all future transport category airplanes would provide adequate maneuver capability in icing conditions for all phases of flight and all airplane configurations.

This notice proposes to require the same airplane handling characteristics that apply in non-icing conditions to continue to apply in icing conditions. Additionally, a specific evaluation for susceptibility to tailplane stall in icing conditions would be added. This proposal, if adopted, would harmonize the U.S. and European airworthiness standards for flight in icing conditions. It would benefit the public interest while retaining or enhancing the current level of safety for operation in icing conditions.

If adopted, this rulemaking would affect manufacturers, modifiers, and operators of transport category airplanes (but only for new designs or significant changes to current designs that would affect the safety of flight in icing conditions). Manufacturers and modifiers may need to develop new tests and analyses to determine ice accretions and to estimate performance effects for design and certification to address icing conditions. Operators may need to develop new or revised procedures regarding identification of icing conditions and the operation of the ice protection system.

Service history shows that flight in icing conditions may be a safety risk for transport category airplanes. There have been nine accidents since 1983 that may have been prevented if this proposed rule had been in effect.[1] The service history that we examined includes airplanes certificated to part 25, to its predecessor, the Civil Air Regulations (CAR) 4b, or to part 25 icing standards when the airplane was certified under part 23. In evaluating the potential for this rulemaking to avoid future accidents, we only considered past accidents involving tailplane stall or potential airframe ice accretion effects on drag or controllability. Accidents related to ground deicing were not considered.

The NTSB has issued several safety recommendations related to airframe icing, some of which are addressed, at least in part, by this notice. If adopted, this rulemaking would require, during type certification, that manufacturers of transport category airplanes:

- Investigate the susceptibility of their airplanes to ice-contaminated tailplane stall (ICTS);
- Provide for adequate warning on the flight deck of an impending stall in icing conditions;
- Show that their airplanes meet the same maneuvering capability and handling characteristics requirements in icing conditions as in non-icing conditions; and
- Show that their airplanes have adequate performance capability in icing conditions.

As discussed in more detail later, the FAA has tentatively determined that this rulemaking would have the following costs and benefits over a 45-year analysis period. The cost of the proposed rule would be $22.0 million (present value). The FAA assumes the initial certification costs of $6.7 million for four new airplane models are incurred in year one of a 45-year analysis period. The future additional fuel burn expense is estimated to be $59.7 million and would be incurred over the 45-year analysis period. The benefits of this proposed rule consist of the value of lives saved due to avoiding accidents involving part 25 airplanes operating in icing conditions. Over the 45-year period of analysis, the potential benefit of the proposed rule would be $89.9 million ($23.7 million in present value at seven percent).

[1] These accidents were selected from the National Transportation Safety Board's (NTSB) accident database, and are discussed in Appendix 3 of this premable.

A. Past Regulatory Approach

Currently, § 25.1419, ''Ice protection,'' requires transport category airplanes with approved ice protection features be capable of operating safely within the icing conditions identified in appendix C of part 25. This section also requires flight testing and analyses to be performed to make this determination. Although an airplane's performance capability and handling qualities are important in determining whether an airplane can operate safely, part 25 does not have specific airplane performance or handling qualities requirements for flight in icing conditions, nor does the FAA have a standard set of criteria defining what ''to safely operate'' in icing conditions means in terms of airplane performance and handling qualities. The proposed revisions to part 25 would provide a comprehensive set of harmonized requirements for airplane performance and handling qualities to address safe operation of transport category airplanes in icing conditions.

Further, § 25.1419 requires an applicant to demonstrate that the airplane can operate safely in icing conditions only when the applicant is seeking to certificate ice protection features. It fails to address certification approval for flight in icing conditions for airplanes without ice protection features.

In contrast, the European airworthiness standards specifically address certification for flight in icing conditions, independent of whether the airplane includes ice protection features. In addition, the European Joint Aviation Authorities (JAA) proposed additional guidance material in the early 1990s to provide criteria for determining whether an airplane's performance and handling qualities would allow the airplane to operate safely in icing conditions. The JAA's guidance material was proposed in draft Advisory Material—Joint (AMJ) 25.1419.[2] The JAA's draft AMJ was published on April 23, 1993, as a Notice of Proposed Amendment (NPA) 25F–219, ''Flight in Icing Conditions—Acceptable Handling Characteristics and Performance Effects.''

B. Harmonization of U.S. and European Regulatory Standards

1. Federal Aviation Administration

Title 14 CFR part 25 contains the U.S. airworthiness standards for type certification of transport category airplanes. The part 25 standards apply to airplanes manufactured within the

[2] A JAA AMJ is similar to an FAA advisory circular.

U.S. and to airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

2. Joint Aviation Authorities

The JAR–25 contains the European airworthiness standards for type certification of transport category airplanes. Thirty-seven European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

3. European Aviation Safety Agency (EASA)

The European Community established a new aviation regulatory body, EASA, to develop standards to ensure the highest level of safety and environmental protection, oversee their uniform application across Europe, and promote them internationally. The EASA formally became operational for certification of aircraft, engines, parts, and appliances on September 28, 2003. The EASA will eventually absorb all of the functions and activities of the JAA, including its efforts to harmonize the European airworthiness certification regulations with those of the U.S.

The JAR–25 standards have been incorporated into the EASA's ''Certification Specifications for Large Aeroplanes,'' (CS)–25, in similar if not identical language. The EASA's CS–25 became effective October 17, 2003.

The proposals contained in this notice were developed in coordination with the JAA. However, since the JAA's JAR–25 and the EASA's CS–25 are essentially the same, all of the discussions of these proposals relative to JAR–25 also apply to CS–25.

The FAA's rulemaking proposal, if adopted, would parallel the JAA's rulemaking proposal, ''Notice of Proposed Amendment (NPA) 25B, E, F–332,'' published on June 1, 2002.

The EASA recently published for comment NPA 16/2004, ''Draft Decision of the Executive Director of the Agency on Certification Conditions.'' This NPA, published for comment in late 2004, is based on the standards that the JAA were expected to adopt.

Although the FAA, the JAA, and EASA intend to harmonize the standards for airplane performance and handling qualities for flight in icing conditions, there are some differences between this rulemaking proposal and the standards proposed by the JAA and EASA. The differences are primarily editorial and are not intended to result in significant regulatory differences.

C. Proposal Development—Aviation Rulemaking Advisory Committee

The FAA, in cooperation with the JAA and representatives of the American and European aerospace industries, recognized that a common set of standards would not only economically benefit the aviation industry, but also maintain a high level of safety. In 1988, the FAA and the JAA began a process to harmonize their respective airworthiness standards. To assist in the harmonization efforts, the FAA established the Aviation Rulemaking Advisory Committee (ARAC) in 1991,[3] to:

1. Provide advice and recommendations concerning the full range of our safety-related rulemaking activity;
2. Develop better rules in less overall time using fewer FAA resources than are currently needed; and
3. Obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are 73 member organizations on the committee, representing a wide range of interests within the aviation community.

We tasked the ARAC Flight Test Harmonization Working Group (FTHWG) to recommend to the ARAC new or revised requirements and compliance methods related to airplane performance and handling qualities in icing conditions.[4]

The FTHWG reviewed in-service incidents and accidents involving transport category airplanes. This review revealed numerous incidents resulting from the effects of ice on airplane performance. The same review showed that the icing-related accidents resulted from a loss of control of the airplane due to the effect of the ice on airplane handling qualities. Considering this service history, the FTHWG determined that airplanes should generally meet the same handling qualities standards in icing conditions that they currently must meet for non-icing conditions. In certain areas, however, the FTHWG decided that the current handling qualities standards were inappropriate for flight in icing conditions. In these areas, the FTHWG developed alternative criteria that would apply to icing conditions.

Since airplane performance degradation was not a causal factor in any of the icing-related accidents, the FTHWG concluded that the current performance standards already provide some safety margin to offset the negative effects of ice accretion. On the basis of this service history, the FTHWG decided that the general approach to airplane performance in icing conditions used by the JAA in their draft AMJ 25.1419 was appropriate and used this approach in its recommendations to the FAA. This approach allows a limited reduction in airplane performance capability due to ice before the effects of icing must be fully taken into account in the performance data provided in the Airplane Flight Manual (AFM). Such an approach minimizes the costs to manufacturers and operators while increasing the current level of safety for flight in icing conditions.

This proposed rulemaking is based on the FTHWG's report, which ARAC approved and forwarded to the FAA, and refers to the ice accretions to be used in showing compliance. These ice accretions are defined in a new subsection of appendix C to part 25.[5]

D. Related Rulemaking Activity

1. Amendment 25–108

This Amendment, ''1-g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations'' (referred to as the 1-g stall rule) (67 FR 708112, November 26, 2002) redefines the criteria for determining the stall speed for transport category airplanes. The stall speed is important because it is used as a reference speed for defining minimum operating speeds that provide a safety margin above the speed at which the airplane will stall. The previous part 25 definition of stall speed defined it as the minimum speed reached in a stalling maneuver. This definition could result in a stall speed being defined that is too low to support the weight of the airplane in level flight.

The recently adopted 1-g stall rule defines the stall speed as the speed at which the aerodynamic lift can support the weight of the airplane in 1-g flight. The 1-g stall rule also introduces a requirement to demonstrate adequate maneuver capability at the minimum operating speeds for airplane configurations associated with low speed operations around airports. The JAA adopted the same 1-g stall speed requirements in Change 15 to JAR–25.

[3] Published in the **Federal Register** (56 FR 2190), on January 22, 1991.

[4] Published in the **Federal Register** (56 FR 2190), on June 10, 1994.

[5] The complete text of the FTHWG's report is available at *http://www.faa.gov/avr/arm/arac/aractasks/fr0404report.pdf.* The FTHWG preferred the term ''ice accretion'' rather than ''ice shape'' because it includes physical characteristics of the ice build-up such as texture and surface roughness in addition to its general size and shape.

2. Ice Protection Harmonization Working Group (IPHWG) Recommendations

The FAA tasked the ARAC to consider whether airplane manufacturers or operators should be required to install ice detectors or provide some other acceptable way to warn flightcrews of potentially unsafe ice accumulations. The ARAC assigned this task to the IPHWG. The IPHWG recommended to the ARAC that the FAA adopt an operating rule for certain types of airplanes that would require a reliable method of informing pilots when to activate the ice protection system as well as a way of knowing when ice is accumulating aft of areas protected by the ice protection system. The IPHWG is also working on a recommendation for a type certification requirement that would identify acceptable ways to inform the flightcrew when to activate the ice protection system.

We also tasked the ARAC to:

- Define an icing environment that includes supercooled large drop (SLD) icing conditions;
- Recommend requirements to assess the ability of aircraft to safely operate in SLD icing conditions, either for the period of time necessary to exit or to operate without restriction; and
- Consider mixed phase conditions (a mixture of supercooled water droplets and ice crystals) if such conditions are more hazardous than the liquid phase icing environment containing supercooled water droplets.

When ARAC finishes its tasks, we expect it to forward to us a report containing their recommendations. These recommendations may lead to future rulemaking to address SLD icing conditions, but would not directly impact this rulemaking.

E. Advisory Material

In addition to being tasked to recommend new or revised requirements related to airplane performance and handling qualities in icing conditions, the ARAC FTHWG was tasked to recommend advisory material identifying acceptable ways to comply with the proposed new or revised requirements. The FTHWG developed a proposed Advisory Circular, (AC) 25.21–1X, ''Performance and Handling Characteristics in the Icing Conditions Specified in Part 25, Appendix C.'' We are requesting public comments on this proposed advisory circular through a separate notice of availability in this edition of the **Federal Register**.

II. Discussion of the Proposals

A. Proof of Compliance (§ 25.21)

We propose to add paragraph (g), to specify the requirements that must be met in icing conditions if an applicant seeks certification approval for flight in icing conditions. As discussed above, a review of icing-related incidents and accidents revealed loss of control to be the greatest threat to safety of flight in icing conditions. Consequently, the FTHWG identified the existing part 25 requirements that could prevent loss of control if they were applied to icing conditions. The FTHWG found, and we tentatively agree, that airplanes should continue to comply with most of subpart B of part 25 with ice on the airplane to ensure safe flight in icing conditions. The subpart B regulations that would be excluded by paragraph (g)(1) were determined to be beyond what was necessary to determine an airplane's ability to operate safely in icing conditions.

Because the airplane performance and handling qualities requirements are flight-related requirements, it is appropriate to place the proposed requirements for flight in icing conditions in part 25, subpart B (Flight) rather than in the current ice protection rule in § 25.1419. Section 25.1419 is in subpart F (Equipment), and, though it is closely linked with the subpart B requirements proposed in this notice, it primarily applies to the ice protection equipment on the airplane.

The proposed subpart B requirements would provide the minimum performance and handling qualities requirements corresponding to the § 25.1419 requirement that the airplane ''be able to safely operate in the continuous maximum and intermittent maximum icing conditions of appendix C.'' Additionally, the proposed requirements would supply the means for determining, from a performance and handling qualities standpoint, whether the ice protection system and its components are effective, as required by § 25.1419(b).

Compliance with the proposed performance and handling qualities requirements may be shown by a variety of means that would be evaluated during the particular airplane type certification program. These means may include flight testing in natural icing conditions or in non-icing conditions using artificial ice shapes, wind tunnel testing and analysis, engineering simulator testing and analysis, engineering analysis, and comparison to previous similar airplanes.

The proposed requirements would not specifically require performance and handling qualities flight testing to be conducted in natural icing conditions. However, we expect that for most new airplane designs, and for significant changes to existing designs, at least a limited set of tests would be flown in natural icing conditions. The purpose of these tests would be to confirm the airplane handling qualities and performance results found through other means. The proposed advisory material will provide guidance on an acceptable flight test program, including the specific tests that should be conducted in natural icing conditions.

Historically, flight tests in measured natural icing conditions have also been conducted to verify analyses used to generate ice accretions for compliance with § 25.1419(b), and to confirm the general physical characteristics and location of ice accretions used to evaluate airplane performance and handling qualities. This proposed rule is not intended to alter this practice or interpretation of § 25.1419(b). Existing AC 25.1419–1, ''Certification of Transport Category Airplanes for Flight in Icing Conditions,'' provides guidance on comparing the ice accretions used to evaluate airplane performance and handling qualities with those obtained in natural icing conditions.

Proposed paragraph (g)(1) would apply the same airplane handling qualities requirements to flight in icing conditions as are currently required for non-icing conditions. Paragraph (g)(1) would also apply most of the airplane performance requirements currently required for non-icing conditions to flight in icing conditions. The icing conditions for showing compliance would be defined in appendix C to part 25. These requirements would apply to normal operations of the airplane and its ice protection system as specified in the AFM. By referencing the AFM, this paragraph would require that this manual include the limitations and operating procedures that are specific to operating in icing conditions.

As noted in the introductory discussion, some degradation in airplane performance capability would be permitted when showing compliance with the requirements for non-icing conditions. The amount of performance degradation permitted in each case is identified in the discussion of the individual performance regulations.

Proposed paragraph (g)(2) would prevent the use of different load, weight, and center-of-gravity limits for flight in icing, except where compliance with the applicable performance requirements impose more restrictive weight limits.

The reason for these proposed requirements is that operation in icing

conditions should be essentially transparent to the flightcrew. There should not be any special procedures or methods used for operating in icing conditions other than activating ice protection systems. This philosophy comes from applying human factors principles to reduce operational complexity and flightcrew workload.

B. Stall Speed (§ 25.103)

We propose to revise § 25.103 to require applicants to determine stall speeds with ice on the airplane. The proposed § 25.103(b)(3) adds ice accretion as a variable that must be considered when determining stall speeds to use for the different part 25 airplane performance standards.

Determining stall speeds with ice accretions is necessary to identify any increase in stall speeds from those determined for non-icing conditions. The applicant would then compare any change in stall speed due to ice accretion with the allowable stall and operating speed effects contained in the proposed airplane performance standards to determine whether or not airplane performance data must be determined specifically for icing conditions.

C. Takeoff (§ 25.105)

We propose to revise § 25.105(a) to add the net takeoff flight path described in § 25.115 to the list of airplane takeoff performance parameters that must be determined under the conditions specified in this paragraph. Additionally, § 25.105(a) would specify when compliance must be shown specifically for icing conditions.

We consider the proposed changes necessary to ensure the safety of takeoff operations in icing conditions. Ice on the wings and control surfaces can reduce the safety margins that currently are provided to prevent stalling the airplane. It can also degrade airplane climb performance, and cause controllability problems. We acknowledge that many transport category airplanes have safely operated in icing conditions using takeoff speeds determined for non-icing conditions. We agree with the FTHWG, however, that it is in the interest of safety to consider the effects of ice accretions on airplane takeoff performance.

In developing this proposal, the FTHWG and the FAA considered four factors:

- Operating rules and practices intended to ensure that critical surfaces of the airplane are free of snow or ice before beginning a takeoff;
- The use of anti-icing fluids that provide some protection from icing during the takeoff;
- Increasing use of ice detectors and deicing/anti-icing systems on airplanes that can be operated while the airplane is still on the ground; and
- The icing conditions that we propose to use for the takeoff flight phase.

Existing operating rules, §§ 91.527(a), 121.629(b), and 135.227(a), prohibit pilots from taking off with snow or ice adhering to the wings or other critical airplane surfaces. Additionally, §§ 121.629(c) and 135.227(b) require airplane operators to have either an approved ground deicing/anti-icing program or conduct a pre-takeoff contamination check within five minutes before beginning a takeoff to ensure that the wings, control surfaces, and other critical surfaces are free of frost, ice, or snow. Operators must train the pilots on the effects of these contaminants on airplane performance and controllability, on how to recognize airplane contamination, and on procedures intended to ensure that contamination is removed before takeoff.

Ground deicing/anti-icing programs include the use of deicing/anti-icing fluids to remove ice and snow and prevent them from reappearing on airplane surfaces during freezing precipitation conditions. Although these fluids are designed to flow off the airplane during the takeoff roll, we expect the fluids to continue to provide some protection throughout the takeoff ground run.

On some older airplane models, the wing ice protection system was designed for use in flight and cannot be operated while the airplane is on the ground. Yet many of the current generation of airplanes have ice protection systems that can be operated while the airplane is on the ground. Some of these systems are also coupled with ice detector systems that will automatically activate the ice protection system in icing conditions. These features tend to reduce the chances that ice will adhere to critical airfoil surfaces during airplane ground operations in atmospheric icing conditions.

As discussed later, we propose to revise appendix C of part 25 to define atmospheric icing conditions specifically for the takeoff phase of flight. These proposed atmospheric icing conditions would apply throughout the takeoff path, but are based on the more critical conditions that would be expected to occur at the end of the takeoff path. These conditions do not include freezing precipitation on the ground. At earlier points in the takeoff path, while the airplane is closer to the ground, the proposed takeoff icing conditions would be conservative, that is, they would predict larger ice accretions than would be likely to occur. If these conditions were to actually occur at ground level, they would form a freezing fog condition that would probably reduce visibility to the point that takeoffs could not be made.

An important part of determining the effects of ice accretion on takeoff performance is to decide at what point in the takeoff ice accretion is considered to begin. For the purposes of this rulemaking, we consider ice accretion to begin when the airplane lifts off the runway surface during takeoff.

Proposed § 25.105(a) would require applicants to determine airplane takeoff performance for icing conditions if the ice that can accrete during takeoff results in increasing the reference stall speed (VSR) or degrading climb performance beyond specified limits. Section 25.105(a) references all regulations related to the takeoff path. As a result, the performance for the entire takeoff path, including takeoff speeds and distances, must be determined for icing conditions if the stall speed or climb performance degradation limits are exceeded.

Section 25.105(a)(2)(i) of the proposal would require applicants to determine takeoff path performance for icing conditions if the stall speed increases by more than 3 knots in calibrated airspeed or 3 percent due to ice accretions. This proposed requirement would be more stringent than the guidance used by the JAA in their draft AMJ 25.1419. The draft AMJ allowed up to a 5 knot or 5 percent increase in stall speed before the takeoff performance would need to be recomputed for icing conditions.

Several commenters on the AMJ, including us, expressed concern over allowing such a large increase in stall speed believing it would result in a significant reduction in safety margin between the minimum operating speeds and the stall speed. We agree with the FTHWG recommendation that a 3 knot or 3 percent increase in stall speeds is the maximum that should be permitted before the takeoff performance data should be recalculated to consider the effects of icing.

Also, the JAA's draft AMJ 25.1419 used the effect of ice accretions on airplane drag rather than on climb performance to determine when the takeoff performance data must be provided for icing conditions. However, we agree with the FTHWG recommendation to consider the effect

of ice accretions in terms of climb performance in § 25.105(a)(2)(ii) because it would cover more operating variables than just the effect of ice on airplane drag.

The part 25 takeoff climb requirements include a safety margin by requiring applicants to determine a net flight path based on the airplane's actual climb performance capability reduced by a set value that depends on the number of engines on the airplane. Proposed § 25.105(a)(2)(ii) would require applicants to determine takeoff path performance specifically for icing conditions if more than half of this safety margin would be lost due to the effects of ice accretion.

Part 25 divides the takeoff climb performance requirements into several segments. To establish the allowable limit for takeoff climb performance degradation in icing conditions, § 25.105(a)(2)(ii) would consider the effect of ice accretions on just the takeoff climb segment defined by § 25.121(b). For most transport category airplanes, this segment most often limits the allowable takeoff weight, and therefore is the most critical to safety. If the effects of ice accretions during the takeoff climb segment defined in § 25.121(b) are beyond specified limits, the airplane performance for the entire takeoff path must be determined with ice accretions on the airplane. This would include from the beginning of the takeoff roll until the airplane is at least 1,500 feet above the takeoff surface. Thus, for airplanes that would be most affected by ice accretions during the takeoff climb, additional safety margins would also be provided for the takeoff ground run even though ice accretion is assumed not to begin until liftoff.

D. Takeoff Speeds (§ 25.107)

We propose to revise § 25.107(c)(3) and (g) to change the reference for maneuver capability considerations from § 25.143(g) to § 25.143(h). This is an editorial change due to the redesignation of § 25.143(g) to § 25.143(h) proposed below.

We also propose to revise § 25.107 by adding a new paragraph (h). This new paragraph would state that the minimum control speeds (V_{MCG} and V_{MC}) and minimum unstick speeds (V_{MU}) determined for the airplane in non-icing conditions may also be used for the airplane in icing conditions. The V_{MU}, V_{MCG}, and V_{MC} speeds are used to determine the takeoff speeds V_1, V_R, and V_2.

The minimum unstick speed (V_{MU}) is defined in § 25.107(d) as the airspeed at and above which the airplane can safely lift off the ground and continue the takeoff. Takeoff speeds must be established sufficiently above this speed to assure the airplane can safely take off considering the variations in procedures and conditions that can reasonably be expected in day-to-day operations. Because these proposals assume that ice accretion does not begin until liftoff, this proposal would allow the V_{MU} speeds for non-icing conditions to be used for determining takeoff speeds in icing conditions.

The ground minimum control speed (V_{MCG}) is used in determining the takeoff V_1 speed. The takeoff V_1 speed is the highest speed at which the pilot must take the first action to be able to safely stop the airplane during a rejected takeoff and the lowest speed at which the takeoff can be safely continued after an engine failure. Since V_{MCG}, like V_{MU}, occurs before the airplane lifts off the runway, the assumption is that ice has not yet begun accreting on the airplane. Therefore, this proposal would allow the V_{MCG} speeds determined for non-icing conditions to be used for determining V_1 for icing conditions.

The air minimum control speed, V_{MC} (commonly referred to as V_{MCA}), is defined in § 25.149(b) as the airspeed at which it is possible to maintain control of the airplane, with no more than 5 degrees of bank, when the critical engine is suddenly made inoperative. Section 25.107 requires the rotation speed (V_R) and the takeoff safety speed (V_2) to be sufficiently higher than V_{MCA} to assure that the airplane will be safely controllable if the critical engine fails during the takeoff. Since V_R occurs before liftoff, like V_{MU} and V_{MCG}, this proposal would allow the V_{MCA} speeds determined for non-icing conditions to be used for determining V_R for icing conditions.

Several concerns must be addressed if we are to allow V_{MCA} speeds determined in non-icing conditions to be used to determine V_2 in icing conditions. Unlike V_R, V_2 occurs after liftoff and ice could have begun accreting on the airplane. Ice may accrete at V_2 because ice protection systems are typically not turned on until the airplane climbs more than 400 feet after takeoff. Also, many airplanes do not have any ice protection on the vertical stabilizer. These concerns could lead to a reduction in the airplane's directional control capability if ice accretion occurs. To alleviate these concerns, the proposed § 25.143(c) would require applicants to show that airplanes are safely controllable and maneuverable at the minimum V_2 speed with the critical engine inoperative and with the ice accretion applicable to the takeoff flight phase.

E. Takeoff Path (§ 25.111)

Currently, § 25.111 defines the takeoff path, describes the airplane configuration that applies to each portion of the takeoff path, and provides airplane performance requirements that must be met. We propose to revise § 25.111 by adding a new paragraph (c)(5) stating that the airplane's drag used to determine the takeoff path after liftoff would be based on the ice accretions defined in the proposed revision to appendix C. To accommodate the addition of the new paragraph, the ''and'' at the end of § 25.111(c)(3) would be moved to the end of § 25.111(c)(4).

The takeoff path begins at the start of the takeoff roll and ends when the airplane is either 1,500 feet above the takeoff surface, or at the altitude at which the transition from the takeoff to the en route configuration is completed and the final takeoff speed attained, whichever is higher. The takeoff path typically has two distinct climb segments: One from the point at which the airplane is 35 feet above the runway up to 400 feet, and the other from a height of 400 feet to the end of the takeoff path. The proposed changes to § 25.111 would identify when the takeoff path must be determined for flight in icing conditions and specify the ice accretion that must be used for these two climb segments.

New paragraph (c)(5) would refer back to the proposed § 25.105(a)(2) to identify when the takeoff path must be determined for flight in icing conditions. The ice accretions referenced in new paragraph (c)(5) would apply to the airborne portions of the takeoff path, since we are assuming that ice accretion does not begin until liftoff. If takeoff path performance must be determined for icing conditions, then the takeoff path must use the takeoff speeds of the proposed § 25.107 for icing conditions, using the ice accretions specified in paragraph (c)(5).

F. Landing Climb: All-Engines-Operating (§ 25.119)

We propose to revise § 25.119 by requiring the airplane landing climb performance to be determined for both non-icing and icing conditions; adding references to the appropriate paragraphs of the proposed § 25.125 revision for the landing climb speed to use for non-icing and icing conditions; referring to the proposed appendix C revision to identify the ice accretion that would be used in determining landing climb performance in icing conditions; and changing the speed used to show

compliance with § 25.119 from a speed less than or equal to V_{REF} to V_{REF}.

We consider the approach and landing phases of flight to be the flight phases most affected by icing conditions because of the potential for descending into and holding in icing conditions prior to landing. In addition, service history has shown that the majority of icing accidents and incidents occur in the holding, approach, and landing flight phases. For these reasons, our policy for the last 40 years has been for applicants to account for the effects of airframe ice accretion in their airplane's approach and landing climb performance data provided in the Airplane Flight Manual. (Approach and landing climb performance refer to the airplane's climb capability in the approach and landing configurations during the approach and landing flight phases. Sections 25.121(d) and 25.119 require minimum level of approach and landing climb performance to ensure that airplanes can abort an approach or landing attempt and safely climb away.) The proposed changes to §§ 25.119 and 25.121(d) (see below) serve to codify this policy.

G. Climb: One-Engine-Inoperative (§ 25.121)

We propose to revise § 25.121 by rearranging paragraphs (b), (c), and (d) to specify when the required climb performance must be determined for icing conditions; refer to the proposed appendix C revision to identify the ice accretion that would be used in calculating approach climb performance in icing conditions; and provide the conditions under which the approach climb speed must be increased to account for the effect of ice accretion.

Sections 25.121(b) and (c) provide the climb performance requirements for the takeoff path segments beginning at the point the landing gear is fully retracted and ending at the end of the takeoff path. As in the proposed revision to § 25.105, we propose to revise § 25.121(b) and (c) to require takeoff climb performance to be determined for icing conditions if the effect of ice: (1) Increases the stall speed at maximum takeoff weight by more than 3 knots or 3 percent, or (2) reduces the climb performance determined in § 25.121(b) by more than half the safety margin provided by the net gradient adjustment required by § 25.115.

Section 25.121(a) provides the climb performance requirements for the takeoff path segment beginning at liftoff and ending when the landing gear is fully retracted. Since we are assuming that ice accretion does not begin until liftoff, only a minimal amount of ice could be accreted during this climb segment. Therefore, the proposal for § 25.21(g)(1) excludes compliance with § 25.121(a) with ice accretions on the airplane.

We propose revising § 25.121(d) to state when the approach climb speed must be adjusted for use in icing conditions. Unlike the speeds used in the takeoff path, the need to adjust the approach climb speed would not be based on the effect of ice accretions on the airplane's stall speed. Instead, the measure for determining whether the approach climb speed needs to be adjusted for icing conditions is based on the effect of ice accretions on the approach climb speed. If the approach climb speed for icing conditions does not exceed the climb speed for non-icing conditions by more than the greater of 3 knots calibrated airspeed (CAS) or 3 percent V_{SR}, then non-icing speeds may be used for calculating approach climb performance for icing conditions.

The existing requirement for determining the approach climb speed in non-icing conditions provides applicants some flexibility by only specifying the maximum allowable approach climb speed. No lower limit is specified and we have accepted approach climb speeds as low as 1.13 V_{SR} (that is, 13 percent above the reference stall speeds). We would accept this same level of flexibility for establishing the approach climb speeds in icing conditions. The approach climb speeds for icing conditions should also be evaluated to ensure that they provide adequate maneuver capability.

This proposal for the approach climb segment is less stringent than the 3 knots or 3 percent V_{SR} standard used for takeoff path speeds. For example, if the approach climb speed is 1.25 V_{SR} and V_{SR} is 100 knots, 3 percent of the approach climb speed is 3.75 knots, while 3 percent of V_{SR} would be only 3 knots. The approach climb speed could increase by 3.75 knots without requiring this increased approach climb speed to be used for calculating the approach climb performance in icing conditions. We consider this small alleviation to be acceptable since it is only relative to the need for increasing the approach climb speed for icing conditions. The approach climb performance must be recalculated with the holding ice accretion and presented in the AFM regardless of whether the approach climb speed is adjusted for operations in icing conditions.

H. En Route Flight Paths (§ 25.123)

We propose to revise § 25.123(a) by specifying a minimum allowable speed for determining en route flight paths, which would apply to both icing and non-icing conditions. The proposed speed, V_{FTO}, is currently used as the minimum allowable speed for the final takeoff.

Additionally, the proposed revision to § 25.123(b) would state when an applicant must determine the en route flight paths specifically for icing conditions. Similar to the takeoff path requirements of the proposed revision to § 25.111, en route flight path performance needs to be specifically determined for icing conditions if the effect of ice: (1) Increases the en route speed by more than 3 knots or 3 percent, or (2) reduces climb performance by more than half the safety margin provided by the net gradient adjustment required by § 25.123(b). The ice accretion to be used would be specified in the proposed revision to appendix C.

The reason for proposing to limit the minimum allowable en route climb speed to V_{FTO} to is to prevent applicants from showing compliance with § 25.123 by trading altitude for airspeed when transitioning from the final takeoff to the en route climb segment. This clarifying change is consistent with our original intent for § 25.123(a).

Another reason for not allowing an en route climb speed less than V_{FTO} is that V_{FTO} is the speed at which the maneuver capability requirements contained in the existing § 25.143(g) must be met in the en route configuration. Allowing an en route climb speed lower than V_{FTO} would not ensure that the airplane has adequate maneuvering capability during the en route climb phase of flight.

We are not proposing any changes to the two-engine-inoperative en route flight path requirements contained in § 25.123(c) for flight in icing conditions. We do not expect the pilot to stay in icing conditions with one engine inoperative for a long enough duration for the failure of a second engine in icing conditions to be an issue.

En route and takeoff flight paths have similar safety issues. Therefore, we are proposing requirements for identifying when en route climb flight paths must be determined for icing conditions that are similar to those proposed for takeoff flight paths. The only significant difference is that for the en route climb paths, a speed of 1.18 V_{SR} determined with the en route ice accretion of proposed appendix C is compared to the en route climb speed selected for non-icing conditions instead of comparing stall speeds with and without ice accretions.

The reason for this difference is to provide a more stringent requirement

for airplanes that use the minimum allowable en route climb speed of 1.18 V_{SR}. (1.18 V_{SR} is the minimum allowable value of V_{FTO} prescribed by § 25.107(g)). Airplanes that use a higher en route climb speed have a larger speed margin to the stall speed and more maneuvering capability in the en route climb phase to help offset the negative effects of ice accumulation.

Due to differences in their methods of generating thrust, propeller-driven airplanes generally have better climb performance at lower airspeeds than turbojet-powered airplanes. To optimize performance, the en route climb speed used for propeller-driven airplanes is usually the minimum allowable speed of 1.18 V_{SR}, while the en route climb speed used for turbojet-powered airplanes is usually higher. Therefore, the proposed requirement would be more stringent for propeller-driven airplanes. We consider the increased stringency for propeller-driven airplanes to be desirable for the following reasons:

• Propeller-driven airplanes generally have deicing systems that cycle on and off, allowing ice to accrete on the protected surfaces before removing it. Also, these deicing systems typically do not remove all of the ice with each cycle, leaving some residual ice. Both of these effects result in drag increases that are generally not present on turbojet airplanes that have ice protection systems using hot bleed air from the engines.

• Propeller-driven airplanes will likely be subjected to increased exposure to icing conditions, due to their slower operating speeds, shorter flight lengths, and lower cruising altitudes.

I. Landing (§ 25.125)

We propose to revise § 25.125(a) to identify when the landing distance must be determined specifically for icing conditions. The proposed requirement would specify that the landing distance must be determined for icing conditions if the V_{REF} in icing conditions exceeds the V_{REF} in non-icing conditions by more than 5 knots CAS. For icing conditions, the landing distance would be determined with the landing ice accretion defined in the proposed revision to appendix C.

Additionally, a new paragraph (b) would be added to include the landing distance requirements that would be moved from the existing paragraph (a). The new paragraph (b) would also set the requirements for determining the landing speeds to use in determining the landing distances for both icing and non-icing conditions. For icing conditions, the landing speed must not be lower than 1.23 V_{SR0} with the landing ice accretion on the airplane if that speed exceeds the V_{REF} for non-icing conditions by more than 5 knots CAS.

The existing paragraphs (b) through (f) would be redesignated as (c) through (g).

Whether landing distances or landing speeds must be determined specifically for icing conditions depends on whether V_{REF} needs to be increased by more than 5 knots CAS to counteract the effect of ice on airplane stall speeds. The reasons behind allowing V_{REF} to increase by up to 5 knots CAS in icing conditions before requiring landing distance performance to be recomputed for icing conditions are:

• As part of the flight testing to demonstrate compliance with the landing distance requirements, we typically evaluate airplane controllability when landing at speeds lower than the normal landing speeds. We usually perform this evaluation at a speed 5 knots below V_{REF} to cover inadvertent speed variations that may occur in operational service. Plus or minus five knots variation from V_{REF} is frequently used as a guideline for evaluating expected operational variations in landing speeds.

• Normal approaches in transport category airplanes are typically flown at speeds above V_{REF} to provide speed margins to account for wind gusts. Although the additional speed should be bled off by the time that the airplane is over the landing threshold, it may not be. Service history does not indicate any safety problems with the resulting longer landing distance.

• Many transport category airplanes are flown at a speed 5 knots higher than V_{REF} during final approach to counter any inadvertent speed loss. Often this additional speed has not been bled off before reaching the landing threshold. Again, service history does not indicate any safety problems with the resulting longer landing distance.

• A 5-knot increase above the V_{REF} speed for non-icing conditions equates to approximately 3 percent of the 1-g stall speed (slightly less than 3 percent for larger airplanes). This is consistent with the allowable stall speed increase proposed for the takeoff path requirements for icing conditions.

As a further safety consideration for the V_{REF} speed, § 25.125(b)(ii)(c) would require that V_{REF} for icing conditions must provide the same maneuvering capability (with ice accretions on the airplane) as is currently required at V_{REF} for non-icing conditions. This may result in an increase to V_{REF} for icing conditions even if this increase is less than 5 knots.

The current § 25.125(a)(2), which would be redesignated as § 25.125(b)(2)(i), requires V_{REF} for non-icing conditions to be not less than the landing minimum control speed, V_{MCL}. This existing requirement ensures that adequate directional control is available in case an engine fails during a go-around. Under the proposed new rule, the V_{MCL} determined for non-icing conditions would continue to be used for icing conditions. This would be similar to the takeoff flight phase, where the takeoff minimum control speeds, V_{MCG} and V_{MCA}, determined for non-icing conditions would continue to be used for icing conditions. Unlike the takeoff case; however, the continued use of the non-icing V_{MCL} is not explicitly stated. We consider the proposed requirements to adequately address this issue without proposing an additional explicit requirement. Section 25.125(b)(2)(ii) requires V_{REF} for icing conditions to be not less than V_{REF} for non-icing conditions. Under § 25.125(b)(2)(i), V_{REF} for non-icing conditions must be not less than V_{MCL} for non-icing conditions. Taken together, these two proposed requirements would allow the V_{MCL} determined for non-icing conditions to continue to be used for icing conditions.

To assure that using the V_{MCL} determined for non-icing conditions will provide safe controllability and maneuverability for icing conditions, the proposed §§ 25.143(c)(2) and (c)(3) would require the applicant to show that the airplane will be safely controllable and maneuverable during an approach and go-around and an approach and landing, both with the critical engine inoperative. For added safety during certification flight testing, these maneuvers may be accomplished with a simulated engine failure (as noted in the proposed advisory material associated with this proposal).

J. Controllability and Maneuverability—General (§ 25.143)

We propose to revise § 25.143 to add a new paragraph (c) that requires the applicant to show that the airplane with ice accretions and with the critical engine inoperative is safely controllable and maneuverable during takeoff, an approach and go-around, and an approach and landing; a new paragraph (i) to identify the ice accretions that must be used in showing compliance with § 25.143 in icing conditions, and to introduce two specific controllability requirements that apply to flight in icing conditions; and a new paragraph (j) to specify tests for ensuring that the airplane has adequate controllability for flight in icing conditions before the ice

protection system is activated and performing its intended function of removing any ice accretions from protected surfaces.

In addition, existing paragraphs (c) through (g) would be redesignated as paragraphs (d) through (h), and paragraph references in the newly designated paragraphs (d), (e), and (f) would be revised accordingly.

The requirements proposed in new paragraph (c) are intended to ensure that using the minimum control speeds for non-icing conditions would not result in controllability and maneuverability safety concerns when the same speeds are used for icing conditions.

The proposed new paragraph (i)(1) would require compliance with all of § 25.143 in icing conditions except paragraphs (b)(1) and (2). Sections 25.143(b)(1) and (2) are excepted from icing analysis under proposed section 25.21(g).

These proposed requirements assume a conventional empennage (that is, wing/fuselage/tailplane) configuration. Special conditions, issued in accordance with § 21.16, may be necessary for certification of airplanes with an unconventional empennage configuration.

Applicants can minimize the number of ice accretions to be tested by using one accretion that is shown to be the most critical accretion for several flight phases.

In many cases, a thin, rough, layer of ice (defined as sandpaper ice in the proposed revision to appendix C) has been shown to have a more detrimental effect on handling qualities for airplanes with unpowered control systems than larger ice accretions. The effect of sandpaper ice accretions may be more significant than larger ice accretions on these airplanes. In some cases, such an accretion has resulted in control surface hinge moment reversals that required the flightcrew to apply extremely high forces to the controls to regain control of the airplane. Applicants would have to consider sandpaper ice in showing compliance with the proposed § 25.143(i).

The proposed paragraph (i)(2) would require applicants to conduct a pushover maneuver down to a zero g load factor with the critical ice accretion on the airplane. (If the airplane lacks enough elevator power to get to a zero g load factor, the maneuver may be ended at the lowest load factor obtainable.) The purpose of this proposed requirement is to evaluate an airplane's susceptibility to a phenomenon known as ice-contaminated tailplane stall (ICTS). Ice-contaminated tailplane stall can be characterized either by completely stalled airflow over the horizontal stabilizer, or by an elevator hinge moment reversal due to separated flow on the lower surface of the horizontal stabilizer caused by ice accretions on the tailplane.

Several incidents and accidents have been caused by ICTS. These incidents and accidents have typically occurred during landing approach when the flightcrew either lowered the flaps or abruptly decreased the airplane's pitch attitude. Either of these actions will increase the angle-of-attack (AOA) of the local airflow over the tailplane. If there is ice on the tailplane, the increased AOA may lead to an ICTS.

The proposed pushover maneuver increases the AOA on an ice-contaminated tailplane by inducing a nose down pitch rate. An airplane is *not* susceptible to an ICTS if, during the pushover maneuver:

- The pilot must continue to apply a push force to the pitch control throughout the maneuver (that is, the airplane will not continue the maneuver to or toward a zero g load factor unless the pilot applies a push force to the pitch control); and
- The pilot can promptly recover from the maneuver without exceeding 50 pounds of pull force on the pitch control.

The proposed pushover maneuver evolved from earlier criteria developed shortly after a series of incidents and accidents highlighted the safety concerns related to ICTS. For example, early ICTS test criteria called for executing a pushover to a 0.3 g to 0.4 g load factor with a pitch rate of not less than 10 degrees per second in an attempt to copy the documented ICTS accident conditions. An aggressive pushover to zero g was later found to result in the same combination of load factor and pitch rate, but with the advantage of not needing sophisticated test instrumentation to perform the test.

In addition to the pushover maneuver, we propose that applicants demonstrate the safety of a sideslip maneuver with an ice-contaminated tailplane, since this has been shown to be a more critical ICTS triggering maneuver for some airplanes. The proposed § 25.143(i)(3) would require that any changes in the force the pilot must apply to the pitch control to maintain speed with increasing sideslip angle must steadily increase with no force reversals.

Proposed § 25.143(j) would address airplane controllability between the time when the airplane first enters icing conditions and when the ice protection system is activated and performing its intended function. In developing the controllability criteria proposed in paragraph (j), we considered the likely duration of this time period and the means that might be used for detecting icing conditions and activating the ice protection system. The proposed advisory material for part 25, appendix C, part II(e) would provide additional guidance for determining the appropriate ice accretion for this testing based on the means of ice detection.

Although activation of the ice protection system is expected to occur shortly after entering icing conditions, it may not occur for a relatively long time if the method of detecting icing conditions depends on the crew visually observing a specified amount of ice buildup on some reference surface (for example, windshield wiper, icing probe). To address this concern, proposed § 25.143(j)(1) requires compliance with all of the requirements of § 25.143 that would apply to flight in icing conditions for this method of detecting icing conditions. In this case, the ice accretion to be used in showing compliance would be the ice accretion that would exist before the ice protection system is activated and is performing its intended function.

For airplanes that use other means of detecting icing conditions, the proposed requirements would be less stringent. This reflects the expectation that the airplane would fly only briefly in icing conditions before activation of the ice protection system. Instead of requiring compliance with all of the requirements of § 25.143 that apply to flight in icing conditions, § 25.143(j)(2) would require only a demonstration that the airplane is controllable in a pull-up maneuver up to 1.5 g load factor, and that there is no longitudinal control force reversal during a pushover maneuver down to a 0.5 g load factor.

K. Stall Warning (§ 25.207)

We propose to revise paragraph (b) to require that the means for providing a warning of an impending stall must be the same for both icing and non-icing conditions. There would be one exception to this general rule. If the means of detecting icing conditions does not involve waiting until some specified amount of ice has accreted on a reference surface, then the stall warning may be provided by a different means during the time from when the airplane first enters icing conditions until the ice protection system is activated and is performing its intended function.

We propose to add a new paragraph (e) to specify the stall warning margin that the stall warning system must provide in icing conditions. The stall

warning margin is how far in advance the pilot is warned of a potential stall. We propose to evaluate the stall warning margin in both straight and turning flight while decelerating the airplane at rates of up to one knot per second. The pilot must be able to prevent stalling the airplane using the same recovery maneuver that would be used in non-icing conditions, starting the recovery maneuver not less than 3 seconds after the stall warning begins. Paragraph (e) also specifies the ice accretions that would be used for showing compliance.

We propose to revise paragraph (f) to consist of the existing paragraph (e), revised to clarify that the pilot must use the same maneuver to demonstrate that the airplane can safely recover from a stall in icing conditions as is used for non-icing conditions.

We propose to add a new paragraph (h) to specify the stall warning requirements for the time period when the airplane first enters icing conditions until the ice protection system is activated and is performing its intended function. The proposed stall warning requirements would be different for different means of detecting icing conditions and whether or not the stall warning is provided by the same means for icing conditions and non-icing conditions.

Currently, part 25 requires airplanes to provide the flightcrew an adequate warning of an impending stall so that the flightcrew can prevent the stall. The current requirement does not consider the effects of ice accretions on the airplane. With ice accretions on the airplane, the airplane may stall sooner (that is, at a higher speed or lower AOA), possibly even before the stall warning would occur. For an airplane to be approved for flight in icing conditions, we consider it necessary to provide an adequate stall warning margin with ice accretions on the airplane. For human factors reasons, we also consider it necessary for the means of providing the stall warning to be the same in icing conditions and non-icing conditions. But as discussed in the specific proposal for § 25.207(h), we would allow a limited exception to this general requirement.

In most transport category airplanes, the stall warning is provided by a device called a stick shaker, which shakes the control column to alert the pilot when the airplane is close to stalling. The proposed addition to § 25.207(b) would establish the general requirement for the same means for the stall warning in icing conditions and non-icing conditions. Section 25.207(b) would, however, allow an exception to the general requirement. The conditions for the exception to the general requirement would be established in § 25.207(h)(2)(ii).

The general rule of § 25.207(b) may result in a different stick shaker activation point for icing conditions because the airplane may stall at a different speed or AOA with ice accretions. In order to maintain a safe margin above the stall speed and to provide sufficient maneuvering capability, an increase in the minimum operating speeds may be needed. Increasing the minimum operating speeds, such as takeoff and landing speeds, may result in a cost increase if operators have to reduce payload to comply with performance requirements at the higher operating speeds.

These potential cost impacts may be minimized for stall warning in icing conditions after the ice protection system has been turned on. Then the higher settings for flight in icing conditions would only be used if the ice protection system has been activated. The higher operating speeds would not be a factor, or cost, in other operations.

However, this design solution would not protect the airplane during the time that the airplane is in icing conditions before activation of the ice protection system. To protect the airplane during this time period, any changes to the stall warning system settings for potential ice accretions would need to be active at all times. This would mean that the minimum operating speeds would be increased for both icing and non-icing conditions with resulting cost implications.

To minimize the potential cost impact, while ensuring flight safety, the FTHWG examined whether different stall warning requirements could be used for flight in icing conditions before activation of the ice protection system. Flight in icing conditions before activation of the ice protection system is a temporary condition. In most cases, this time is expected to be relatively short. In those cases, proposed paragraph (h)(2) would allow the stall warning to be provided by a different means than is used for non-icing conditions. For example, natural airplane buffeting might be used instead of a stick shaker. By allowing a different means of stall warning, the need to change the stall warning system setting would be minimized.

However, if the stall warning is provided by a different means than for flight in non-icing conditions, the proposal seeks to balance this with more stringent flight demonstration requirements. The requirements would be more stringent for demonstrating that the pilot can safely recover the airplane after a stall warning has occurred. This demonstration occurs during the flight tests to show acceptable flight characteristics for stall recovery. For the time that the airplane is in icing conditions before the ice protections system has been activated, if stall warning is provided by a different means than for non-icing conditions, it may take longer for the flightcrew to recognize the impending stall and take recovery action. Therefore, instead of allowing a recovery maneuver to be started one second after the onset of stall warning, the recovery maneuver must not begin until at least 3 seconds after the onset of stall warning. Paragraph (h)(2)(i) of the proposal allows the recovery to start within one second of the stall warning. The more stringent three-second requirement is contained in the proposed paragraph (h)(2)(ii).

Additionally, proposed paragraph (h)(2)(ii) would require the applicant to show that the airplane has safe handling qualities in case the flightcrew does not take suitable recovery action in time to prevent stalling. Compliance with the stall characteristics requirements of § 25.203 would be required for stalls demonstrated using a one knot per second deceleration rate.

Earlier, we stated that in most cases, flight in icing conditions before activation of the icing system is expected to be relatively brief. However, if the means of detecting icing conditions and activating the ice protection system depends on the flightcrew visually identifying a discrete amount of ice on a reference surface (for example, one-quarter-inch of ice on the wing's leading edge), then this temporary condition may be of a relatively long duration. Therefore, we consider it appropriate to apply the same requirements for stall warning to this case as are applied to the case of flight in icing conditions after the ice protection system is fully active. For this case, we propose that the stall warning indication must be provided by the same means as in non-icing conditions. Proposed paragraph (h)(1) contains this requirement.

The FTHWG determined that applying the existing stall warning margin requirements of § 25.207(c) and (d) to icing conditions would be far more stringent than best current practices and would unduly penalize designs that have not exhibited safety problems in icing conditions. The FTHWG examined whether the stall warning requirements of existing § 25.207(c) and (d) could be made less stringent for icing conditions without

compromising safety. The proposed § 25.207(e) resulted from this effort.

In developing the proposed § 25.207(e), the FTHWG determined that the types of transport category airplanes involved in icing-related stall accidents:

- Were equipped with deicing boots that operated cyclically (for example, a boot cycle every one to three minutes), and
- Were generally very susceptible to large affects on stall speeds from ice accretions during the periods between boot cycles (known as intercycle ice).

The proposed criteria of § 25.207(e), in combination with the proposed § 25.207(b), would likely require different stall warning system settings for icing conditions and non-icing conditions on future airplanes with those characteristics. These proposals would have a lesser impact on airplanes without those characteristics. The stall warning settings established for the airplane without ice accretions may be retained for operation in icing conditions, provided they are still adequate to prevent stalling if the pilot does not take any action to recover until three seconds after the initiation of stall warning. Since all modern conventional transport category airplanes use some type of artificial stall warning system (stick shaker or combined aural and visual warning), and since three seconds is considered adequate time for response by a trained pilot, we agree with the FTHWG that this stall warning definition would be acceptable for icing conditions.

The proposed revision of § 25.207(f) would require the pilot to use the same stall recovery maneuver during the compliance demonstration for icing conditions as is used for non-icing conditions. This proposal is based on human factors considerations. In operational service, pilots would not be expected to respond differently to a stall warning indication in icing conditions versus non-icing conditions.

L. Wind Velocities (§ 25.237)

The proposed revisions to § 25.237(a) would add a requirement to establish a safe landing crosswind component for use in icing conditions. The proposed revision to paragraph (a) also would state that the crosswind component established for takeoff without ice accretions may be used for takeoffs conducted in icing conditions.

For taking off in crosswinds, we consider it unnecessary to consider the effect of ice accretions since these proposals assume that ice accretions do not begin until liftoff. Therefore, airplanes will accrete very little ice, if any, while close to the ground where crosswinds are a significant safety concern. Proposed § 25.237(a)(2) explicitly states that the takeoff crosswind component without icing is valid for icing conditions.

However, the conditions on landing are different. Before landing, the airplane may spend a significant amount of time exposed to icing conditions. These ice accretions may affect directional control when crosswinds are encountered close to the ground. As a result, (a)(3)(ii) requires evaluation of the landing crosswind component with ice accretion.

M. High-Speed Characteristics (§ 25.253)

We propose to revise § 25.253 by adding a new paragraph (c) to define the maximum speed for stability characteristics, V_{FC}/M_{FC}, for icing conditions. The proposal would permit applicants to define a V_{FC}/M_{FC} for icing conditions that is different than the V_{FC}/M_{FC} defined for non-icing conditions. Additionally, § 25.253(b) would be revised to refer to § 25.143(g) rather than § 25.143(f) due to the proposed renumbering of § 25.143.

V_{FC}/M_{FC} is the highest speed at which compliance with several airplane handling qualities requirements must be shown. The FTHWG's review of historical certification data showed that none of the flight tests for airplane handling qualities performed with ice accretions were conducted above 300 knots CAS. The air loads associated with such high speeds tend to make it difficult to keep either artificial or natural ice attached to the airframe to accomplish the testing. It also minimizes the possibility of encountering this condition in operational service. Therefore, we propose that the maximum speed for demonstrating stability characteristics with ice accretions is the lower of V_{FC}, 300 KCAS, or any other speed at which it can be shown that the airframe will be free of ice.

N. Pilot Compartment View (§ 25.773)

We propose to revise § 25.773(b)(1)(ii) to replace the phrase ''if certification with ice protection provisions is requested'' with ''if certification for flight in icing conditions is requested.''

The proposed change is necessary to be consistent with the proposed change to § 25.1419. As discussed in the reason for revising § 25.1419, compliance with icing-related safety of flight requirements should depend on whether the airplane would be approved to operate in icing conditions, not on whether the airplane has approved ice protection provisions installed.

O. Inlet, Engine, and Exhaust Compatibility (§ 25.941)

We propose to revise the references to §§ 25.143(c), (d), and (e), contained in paragraph (c) of § 25.941, to read § 25.143(d), (e), and (f).

The proposed changes are necessary to maintain references to the correct paragraphs of § 25.143 if the changes to § 25.143 being proposed by this rulemaking are adopted.

P. Ice Protection (§ 25.1419)

We propose to revise the introductory text of § 25.1419 to replace the phrase, ''If certification with ice protection provisions is desired * * *'' with ''If certification for flight in icing conditions is desired * * *'' The current rule requires an applicant to demonstrate an airplane's ability to safely operate in icing conditions only when the applicant is seeking to certificate ice protection features. It fails to address certification approval for flight in icing conditions for airplanes without ice protection features. The proposed revision, which would adopt the existing wording from JAR 25.1419, would require an applicant to demonstrate the airplane's ability to safely operate in icing conditions whenever the applicant is seeking approval for flight in icing conditions.

We also propose to simplify the second sentence of § 25.1419 to remove redundant wording. This change is editorial in nature and is not intended to change the requirement in any way.

We propose to amend § 25.1419 to incorporate the revised introductory text for the following reasons:

- A literal reading of the current § 25.1419 wording could imply that the applicant does not have to demonstrate that the airplane can be safely operated in icing conditions unless an ice protection system is installed.
- The revised text would clarify that any airplane approved to fly in icing conditions must be capable of operating in the icing conditions of appendix C of part 25 regardless of whether or not the airplane has an ice protection system.

Q. Part 25, Appendix C

We propose to revise appendix C of part 25 to create two subsections: Part I to define the atmospheric icing conditions that must be considered when showing compliance with the icing-related requirements of part 25, and part II to define ice accretions for each phase of flight. We also propose to add a definition of the atmospheric icing conditions to use specifically for the takeoff phase of flight.

Proposed Appendix C, Part I

Proposed appendix C, part I would contain the existing appendix C definitions of atmospheric icing conditions. We propose adding a definition of ''takeoff maximum icing,'' which is to be used in determining ice accretions for the takeoff phase of flight.

Proposed Appendix C, Part II

Proposed appendix C, part II(a) would contain definitions of the ice accretions appropriate to each phase of flight. Proposed appendix C, part II(b) would provide options for reducing the number of ice accretions to be considered for each phase of flight. Proposed appendix C, part II(c) would permit applicants to use, for the airplane performance tests, the same ice accretion used for evaluating handling characteristics. Proposed appendix C, part II(d) would define the conditions for determining the ice accretions for the takeoff phase of flight. Proposed appendix C, part II(e) would define what ice accretion must be considered prior to normal ice protection system operation.

One early concern with developing appropriate airplane performance and handling qualities requirements for the takeoff phase of flight was the atmospheric icing environment close to the ground. The FTHWG members expressed significant concerns with using the existing appendix C atmospheric icing envelopes for this purpose. The FAA meteorologists confirmed that the existing appendix C atmospheric envelopes are not generally representative of icing conditions close to the ground.

In general, for determining the size, shape, location, and texture of ice accretions on the airplane, one needs information about the atmospheric icing environment, *i.e.*, icing cloud size, cloud liquid water content, water droplet size, expressed in terms of the mean effective diameter of the droplets, and ambient air temperature.

We propose to use the following definition of atmospheric icing conditions for takeoff maximum icing conditions in appendix C, part I(e): An icing cloud extending from ground level to a height of 1,500 feet above the takeoff surface with a liquid water content of 0.35 grams/meter^3, water droplets with a mean effective diameter of 20 microns, and an ambient temperature of minus 9 degrees Celsius ($-9°$ C). The following discussion presents the reasons for selecting these values.

Since the takeoff phase of flight is relatively short, generally ending at a height of 1,500 feet above the takeoff surface (ref. § 25.111(a)), we consider it reasonable to assume that the entire takeoff phase could be flown within the same icing cloud. Therefore, we propose that the takeoff maximum icing conditions would extend from ground level to a height of 1,500 feet above the level of the takeoff surface.

Although measured data for liquid water content at low altitudes are sparse, a comparison of data contained in the FAA Technical Center's database on inflight icing conditions with theoretical predictions suggest a maximum liquid water content within the icing cloud of 0.35 grams/meter^3 from ground level up to 1,500 feet. We propose to use this value within the definition of the maximum takeoff icing conditions. This proposed value would also cover the potential for dense ground fog at freezing temperatures, which our meteorologists stated would expose the airplane to a liquid water content of approximately 0.30 grams/meter^3.

For the size of the water droplets, both industry and FAA icing specialists concurred that a mean effective diameter of 20 microns would be appropriate for icing conditions occurring near ground level. We propose to use this value within the definition of the maximum takeoff icing conditions.

Selection of the ambient temperature for takeoff icing was based on theoretical predictions that showed the effect of temperature to decrease significantly as the temperature itself decreased. We propose to use an ambient temperature for the takeoff icing atmosphere of minus 9 degrees Celsius ($-9°$ C), the point at which any further decrease in temperature had a negligible effect on the resulting ice accretion.

According to our meteorologists, the amount of water vapor that can be held without condensing in a given volume of space depends only on the temperature of the gas (water vapor, air, etc.) in that space. It does not vary with altitude. Therefore, the proposed takeoff icing atmosphere would be equally applicable to all airport runway elevations.

Proposed part II(a) references specific phases of flight and defines the critical ice accretions associated with the specific phase of flight. In the main body of the rule, various sections require evaluation using the ice accretion defined in appendix C. Proposed part II(a) contains those definitions. For example, § 25.125(a)(1) requires evaluation of landing distance using the ice accretion defined in appendix C. To perform the evaluation required by § 25.125(a)(1), an applicant would use the landing ice definition found in paragraph (5) of this section.

To reduce the number of artificial ice accretions that must be considered, proposed part II(b) would permit the ice accretion determined for one flight phase to be used in showing compliance with the flight requirements of another phase, provided the applicant can show it has a more critical effect on the flight parameter being evaluated. For example, using the ice accretion determined for the holding phase to show compliance with the requirements for the takeoff phase will generally have a larger effect on performance and therefore be more penalizing than using an ice accretion determined specifically for the takeoff phase.

Proposed part II(c) clarifies that the ice accretion with the most adverse effect on handling qualities may also be used during the flight test demonstrations of performance as long as any performance differences are conservatively taken into account. This proposed section is consistent with the intent behind proposed part II(b) to reduce the number of ice accretions that must be considered. Unlike handling qualities, performance effects between relatively small differences in ice accretion generally can be addressed adequately through analysis.

Proposed part II(d) states the assumptions under which the takeoff ice accretions are determined. Proposed part II(d) also states that it must be assumed that the crew does not take any action to activate the ice protection system until the airplane is at least 400 feet above the takeoff surface. This requirement is consistent with the existing requirement of § 25.111(c)(4) that limits the types of configuration changes requiring crew action before reaching 400 feet above the takeoff surface.

We consider it necessary to also take into account the effects of any ice accretion that may form on the airplane from the time the airplane enters icing conditions until the ice protection system is activated and is performing its intended function. The size, shape, location, and texture of this ice accretion will depend on: (1) The means used to identify that the airplane is in icing conditions (for example, the pilot seeing ice accreting on the airplane, an ice detector, a combination of freezing temperatures and visible moisture), (2) the means and procedures for activating the ice protection system (for example, the pilot manually activating the system after a specified amount of ice builds up or automatic activation), and (3) the

system characteristics (for example, the time it takes to effectively remove the ice). We propose to define the ice accretion applicable to the time period before the ice protection system has been activated and is performing its intended function as a period of time in the continuous maximum icing conditions of proposed part I of appendix C, including:

- The time for recognition,
- A delay time appropriate to the means of ice detection and activation of the ice protection system, and
- The time needed for the ice protection system to perform its intended function after manual or automatic activation.

III. Discussion of Non-Consensus Issues

One of the goals of the ARAC process is consensus on the proposed recommendations. Due to the variety of interests represented in the FTHWG, this goal was not fully achieved. The areas of non-consensus, however, were confined to specific details within the proposals, and not to the overall need to amend part 25 to address airplane performance and handling qualities in icing conditions. The issues for which full consensus was not achieved within the FTHWG were:

1. The requirement that a push force must be needed throughout the pushover maneuver proposed in the new § 25.143(i)(2);
2. Whether the test to evaluate longitudinal handling qualities during sideslip maneuvers should be required by regulation as proposed in the new § 25.143(i)(3), or should only be included in advisory material as one means of showing compliance;
3. Whether the same airplane performance and handling qualities requirements (§§ 25.143(j) and 25.207(h)) should always apply whenever the means to activate the ice protection system depends on the pilot to visually identify when the airplane is in icing conditions; and
4. Whether the proposed revision to appendix C adequately ensures that the full range of variables are considered in determining what the critical ice accretion is for a particular flight phase.

Each of these non-consensus issues is discussed in more detail below.

A. Non-Consensus Issue 1—§ 25.143(i)(2)

The FTHWG did not reach a consensus on the issue of requiring a push force throughout the maneuver down to a zero g load factor (or the lowest load factor obtainable if limited by elevator power). Although there was consensus that the test maneuver should be performed to zero g, the group did not reach a consensus on whether the pilot should be required to apply a push force to the longitudinal control system throughout the maneuver until a zero g load factor is attained. The FTHWG considered two alternatives.

Alternative 1 was developed by FTHWG members who did not support our proposal of requiring a push force to be maintained down to zero g load factor in the pushover maneuver. These FTHWG members disagreed with the proposal for the following reasons:

- Historically, the pushover test was performed to a 0.5 g load factor rather than zero g. For example, as practiced by Transport Canada (the Canadian airworthiness regulatory authority), this demonstration was done with a high pitch rate. Consequently, there was significant overshoot of the 0.5 g load factor, down to approximately 0.25 g or less. This maneuver was intended to be a controllability test beginning with the pilot abruptly pushing on the control column to achieve a high nose-down pitch rate, followed by a pull to recover. The intent was not to reach a specific g level below 0.5 g, but to show that the pilot could perform a satisfactory recovery. This has proven to be an acceptable test technique. To date, airplanes evaluated with this technique have had a satisfactory safety record in service.
- Since the beginning of the 1980s, the practice of many certification authorities has been to require testing to lower load factors. This evolved until the introduction of the JAA's NPA 25F–219, which not only requires testing to zero g, but also requires a push force throughout the maneuver to zero g. A zero-g pushover is considered to be an improbable condition, going well beyond any operational maneuver, and does not properly represent gusts, pitch rate, elevator position, or other factors that may contribute to tailplane stalls. Also, since the NPA requirement was developed for a specific turboprop, and motivated by service experience on turboprop airplanes, other requirements were proposed for other types of airplanes.

For the above reasons, the supporters of alternative 1 to § 25.143(i)(2) consider that requiring a push force to load factors as low as zero g is excessive. Instead, they recommend replacing proposed § 25.143(i)(2) with:

> The airplane must be controllable in a pushover maneuver down to zero g, or the lowest load factor obtainable if limited by elevator power. It must be shown that a push force is required throughout the maneuver down to 0.5 g. It must be possible to promptly recover from the maneuver without exceeding 50 pounds pull control force.

Further supporting rationale: FAA Advisory Circular 25–7A, ''Flight Test Guide for Certification of Transport Category Airplanes,'' defines the boundaries of various flight envelopes. With regard to the minimum load factor with flaps down:

- The normal flight envelope (NFE) goes to 0.8 g;
- The operational flight envelope (OFE) goes to 0.5 g; and
- The limit flight envelope (LFE) goes to zero g.

Conceptually, the boundaries of the OFE are as far as the pilot is expected to go intentionally, while the LFE is based on structural or other limits that should not be exceeded. Between the OFE and the LFE, it is acceptable for degraded handling qualities, but the airplane must remain controllable and it must be possible to avoid exceeding the limit load factor (see § 25.143(b)).

Although existing regulations do not allow force reversals (for example, from a push force on the control column to a pull force in this case) for the en route flight phase, in practice, the certification tests for these rules do not cover the full structural limit flight envelope. Rather, the certification tests cover a reasonable range of load factors sufficient to cover normal operations. For example, in the en route configuration, where the limit minimum load factor is usually negative 1 g, the JAA's Advisory Circular Joint (ACJ) No. 2 to JAR 25.143(f) states: ''* * * assessment of the characteristics in the normal flight envelope involving normal accelerations from 1 g to zero g, will normally be sufficient.''

With flaps up, zero g is the midpoint between the limit load factor and the trim point. The corresponding points for flaps down are zero g for the limit load factor and 0.5 g for the midpoint assessment of characteristics. The supporters of alternative 1 to § 25.143(i)(2) are concerned that requiring a push force to zero g means that this limit load factor will be routinely exceeded in the flight tests used to show compliance with the proposed rule.

The zero-g pushover is not like typical stability tests where it is possible to establish steady state conditions and measure a repeatable control force. The pushover is an extremely dynamic maneuver lasting only a few seconds and involving high pitch rates in both directions. There will always be variability due to pilot technique. The pilot may pull slightly before reaching zero g to reduce the nose-down pitch rate and anticipate the recovery. This

makes it impossible to distinguish between the force required to reach a given g level and the force the pilot applies to track the targeted pitch rate. At critical conditions, airplanes that meet the criterion suggested in the alternative proposal still require a significant pull force to recover.

Alternative 1 to § 25.143(i)(2) would set a limit of 50 pounds on the total control force needed to recover promptly. This would ensure that the force that the pilot must exert is low enough so that even with only one hand on the pitch control (the other hand might be on the thrust levers or another control), the pilot can handle a combination of:

- The force to halt the nose-down pitch rate,
- The force due to any hinge moment reversal, and
- The force to establish a satisfactory nose-up pitch rate for recovery.

The 50-pound limit is used for a similar purpose in several other rules. The effect of data scatter and variations in pilot technique will cause airplanes that are not clearly free of ICTS concerns to exceed the 50-pound limit too often, so they will not pass this test.

The supporters of alternative 1 to § 25.143(i)(2) believe that the proposal contained in this rulemaking has the potential for adversely affecting an entire class of airplanes—namely light to medium business jets with trimmable stabilizers and unpowered elevators. Many of these airplanes exhibit a mild control force reversal from a push force to a pull force between zero g and 0.5 g.

Although such a characteristic will not comply with the proposed rule, the airplane remains easily controllable. The proposed requirement for a push force to be required down to a zero g load factor would reduce the stabilizer incidence available for trimming the airplane by two to four degrees. This would require either a 20 to 40 percent larger stabilizer or other design changes to compensate for the reduction in stabilizer trim range. The supporters of alternative 1 to § 25.143(i)(2) do not believe that the cost of these changes is justified by any safety benefit, as these airplanes are not the types having ICTS accidents.

Furthermore, the proposed § 25.143(i)(1) would require that sandpaper ice be considered if the elevator is unpowered, regardless of the ice protection system. Many of the current business jets are equipped with anti-ice systems that prevent ice formation on the stabilizer leading edge. Thus, the jets would be evaluated under more critical assumptions (that is, with the anti-ice system off) than the types that have had accidents.

Ice-contaminated tailplanes retain normal linear characteristics until the onset of flow separation. The separation causes the hinge moment coefficient to slope gradually from one level to another over a range of 4 to 10 degrees AOA. With the elevator down, the hinge moment coefficient changes sign at an AOA in this range, which results in the control force reversal from a push to a pull. On a particular business jet with a relatively small elevator, this results in a gradually increasing pull force from 0 pounds at approximately 0.4 g to 25 pounds at zero g.

On airplanes with large unpowered elevators, especially those with long chord lengths, the elevator control forces resulting from a stalled tail can be very high. These forces may even be too high for the pilots to counteract. For example, assume the elevator dimensions of the previous example are scaled up by a factor of 2. The elevator chord is then doubled, the area is quadrupled, and the pilot must exert 8 times as much force on the control to move the elevator. If the control force in the previous example were 25 pounds at zero g, the control force for this larger elevator would be 200 pounds. These examples illustrate how the size and design of elevators for certain airplanes determine whether the control forces would be acceptable or hazardous. The test criteria recommended for showing compliance with the requirements proposed as alternative 1 to § 25.143(i)(2) would identify those airplanes with the hazardous characteristics. Therefore, the supporters of alternative 1 to § 25.143(i)(2) believe that there is no difference in safety between this alternative and our proposal.

Results of the National Aeronautics and Space Administration's (NASA) Tailplane Icing Program provide a basis for evaluating whether the proposed requirements adequately address the safety concerns. Flight tests were conducted in which a test airplane performed a series of pushovers and other maneuvers with and without ice accretions. Even without ice accretions, reversed control forces were sometimes experienced in the pushover maneuvers for some configurations. With the ice accretions, control forces exceeding 100 pounds were experienced in some of the pushovers although the airplane remained controllable. In one test, a departure from controlled flight occurred during a power transition with a critical ice accretion and flaps 40 (which is the maximum landing flap configuration for this airplane). This event involved a sudden nose-down pitch-over from 1-g flight like the ICTS accident scenarios. The same ice accretion had degraded pushover characteristics to the point that a 50-pound pull was required to recover from zero g with flaps 10, and 100 pounds was required with flaps 20. Accordingly, the criteria proposed as alternative 1 to § 25.143(i)(2) provide an adequate safety margin, and would have identified the aircraft as unacceptable before it ever got to the flaps 40 configuration at which it lost control.

We disagree with the position of the supporters of alternative 1 to § 25.143(i)(2) for the following reasons:

a. Ice contaminated tailplane stall/elevator hinge moment reversal has been a significant factor in accidents occurring in icing conditions. Rapid and large changes in pitch, significant changes in control forces, pilot surprise, and possible disorientation in poor visibility that can follow from a tailplane stall/elevator hinge moment reversal can result in loss of pitch control. Coupled with the weather conditions that lead to ICTS, this loss of control will usually occur at low altitude where there is a higher probability of an accident.

b. Historically, the pushover test was usually performed to 0.5 g load factor, although this was often done with a high pitch rate and, hence, there was some overshoot of the 0.5 g load factor. A push force on the elevator control was required to reach this g level. Certification testing and service experience has since shown that testing to only to 0.5 g is inadequate, considering the relatively high frequency of experiencing 0.5 g in operations. Since the beginning of the 1980s, the practice of many certification authorities has been to require testing to lower load factors, and the JAA's Notice of Proposed Amendment (NPA) 25F–219 requires a push force throughout the maneuver to zero g.

c. Reversal of elevator control force versus normal acceleration is not acceptable within the flight envelope. Existing requirements and advisory material addressing elevator control force characteristics (§§ 25.143(f), 25.255(b)(2), and the guidance material to § 25.143(f)) do not allow force reversals. Furthermore, a survey of FAA, JAA, and other flight test personnel showed that a clear majority did not favor anything less than a push force on the elevator control to zero g.

Alternative 1 to § 25.143(i)(2) would at least partially address the cause of past ICTS accidents. However, the method proposed for determining the acceptability of a control force reversal

is subjective and would lead to inconsistent evaluations. We maintain that a push force to zero g with an ice-contaminated tailplane is the minimum standard that can be accepted. Zero g is within the flight envelope of the airplane and this criterion addresses the need to have acceptable handling qualities for operational service when the pilot would not expect any control force reversal. Requiring a push force to zero g also removes subjectivity in the assessment of the airplane's controllability and provides readily understood criteria of acceptability. Any lesser standard would not give confidence that the problem has been fully addressed.

Transport Canada proposed the following alternative as a compromise between requiring a push force to either zero g or 0.5 g:

Transport Canada advisory material dating back to the mid-1980s specified that applicants must demonstrate ± 0.5 g applied to the longitudinal control. In practice, the demonstration was done in a fairly abrupt maneuver that generated a significantly higher transient pitch rate than that associated with a steady normal acceleration. The minimum normal acceleration obtained was usually around 0.25 g or less. It was considered that the pitch rate aspect was just as important as the actual normal acceleration in determining whether there were unsafe characteristics associated with tailplane stall. No pass/fail criteria were provided in the Transport Canada guidance except that the characteristics had to be satisfactory.

The accident record on ice contaminated tailplane stall indicates that a significant factor was the pilot's startled reaction to an abrupt hinge moment reversal and the magnitude of the control force required to recover the airplane to a normal 1 g condition. Alternative 1 to § 25.143(i)(2) would recognize this controllability issue by limiting the amount of pull force required to promptly recover the airplane from a zero g condition to a 50-pound pull force. In addition, recognizing that positive stability is also important, alternative 1 to § 25.143(i)(2) would require a push force down to 0.5 g.

Accident data available to Transport Canada indicate that aircraft involved in incidents and/or accidents incurred a tailplane stall at approximately 0.3 g to 0.4 g. Based on this data and Transport Canada's past practice, alternative 1 to § 25.143(i)(2) would be acceptable, except that the issue of pitch rate is not specifically identified in the criteria. Transport Canada recognizes that combining pitch rate with a normal acceleration in a requirement is probably too complex, especially for the wide range of aircraft designs encompassed by part 25 and the parallel JAR–25 standards. Thus, Transport Canada considers that, if the requirement would only specify a 'g' level, then 0.5 g for positive stability is inadequate. As a compromise, Transport Canada proposes requiring a push force down to a value of 0.25 g as alternative 2 to § 25.143(i)(2).

While it is a compromise between the requirement proposed in this rulemaking and alternative 1 (by specifying 0.25 g for the push force requirement), we disagree with this alternative because it does not fully address the safety concerns throughout the flight envelope. It also does not fully address the cost concerns expressed within the FTHWG regarding § 25.143(i)(2) as proposed in this rulemaking.

The Transport Canada alternative recognizes the importance of pitch rate. An abrupt nose-down control input is required to reach zero g. We consider that testing to zero g, however, ensures that high pitch rates are adequately evaluated without the added complication of specifying a pitch rate requirement.

B. Non-Consensus Issue 2—§ 25.143(i)(3)

The proposed new § 25.143(i)(3) would add a requirement that any changes in longitudinal control force to maintain speed with increasing sideslip angle be progressive with no reversals or unacceptable discontinuities. The FTHWG did not reach a consensus on whether it would be necessary to add a specific regulatory requirement to address this issue. The majority of the FTHWG members felt that there did not appear to be sufficient data to establish criteria specific enough to stand as a regulatory requirement and proposed that the issue be addressed through non-regulatory guidance material.

Anomalies in longitudinal control force during sideslip maneuvers have been of concern to some accident investigators and regulatory specialists. At one time, we proposed that pushover maneuvers be conducted while in sideslips. Transport Canada considered that performing sideslips in a pushover maneuver was excessive, but recognizing the concern, proposed an additional requirement that would specifically assess longitudinal control stick forces while in sideslip maneuvers.

We consider that a consensus was reached on the need to address this issue; the only difference appears to be whether it should be addressed in advisory material or in the proposed rule. We consider that this issue raises important safety concerns that must be addressed as a specific evaluation requirement. Therefore, it is appropriate to place it in the rule rather than in an AC. We recognize that AC material may also be needed to provide guidance on an acceptable means of compliance.

C. Non-Consensus Issue 3—§§ 25.143(j)(1) and 25.207(h)

The proposed new §§ 25.143(j)(1) and 25.207(h) would apply different requirements when different means are used for the pilot to visually recognize icing conditions. Compliance with all of the § 25.143 controllability requirements for non-icing conditions would apply if activation of the ice protection system depends on seeing a specified ice accretion on a reference surface (for example, on an ice accretion probe, or a wing leading edge). However, less stringent requirements using a lesser ice accretion would apply to any other means of identifying icing conditions, including seeing the first indication of an ice accretion on a reference surface.

The FTHWG did not reach a consensus on the proposed § 25.143(j)(1). The Air Line Pilots Association (ALPA), which was represented in the FTHWG, disagrees with the proposal. The ALPA considers visually recognizing the first indication of ice accreting on a reference surface to be the same situation as visually recognizing a specific amount of ice accretion on a reference surface. To the ALPA, both are means of visual recognition that require the flightcrew to monitor conditions outside the cockpit. Whenever it is necessary for the pilots to check outside the cockpit (which the ALPA does not consider to be equivalent to a primary instrument visual scan pattern), the ALPA believes that the same basic maneuver capabilities, stall protection requirements, and ice accretion amounts should apply.

The ALPA proposes the following alternative text for § 25.143(j)(1):

''If normal operation of any ice protection system is dependent upon visual recognition of ice accretion, the requirements of § 25.143 are applicable with the ice accretion defined in proposed appendix C, part II(e).''

The ALPA has similar concerns with the proposed § 25.207(h)(1) and proposes the following alternative text:

''If normal operation of any ice protection system is dependent upon visual recognition of ice accretion, the requirements of this section, except

paragraphs (c) and (d), are applicable with the ice accretion defined in appendix C, part II(e).''

We disagree with the alternative proposals for §§ 25.143(j)(1) and 25.207(h)(1).

The FTHWG found that there are significant differences in the aerodynamic effects on an airplane between the two different means of visual recognition of icing conditions identified in the ALPA alternative proposal discussion. The best example of the means covered by §§ 25.143(j)(1) and 25.207(h)(1), as proposed in this notice, are airplanes with pneumatic deicing boots. The operating procedures call for a specified amount of ice build-up before activating the ice protection system, a process that is repeated often during an icing encounter. In this case, the airplane is assured of being operated with some level of aerodynamic degradation before activation of the ice protection system.

The best example of the second type of visual recognition of icing conditions are airplane models that are equipped with an ice accretion probe in the pilot's field of view outside the airplane. The published procedure calls for activating the ice protection system at the first indication of ice buildup on the accretion probe. Such accretion probes, or an equivalent such as a windshield wiper post, are highly efficient ice collectors, and typically will accrete visible ice prior to ice accretion on aerodynamic surfaces. Under this means of detecting icing conditions, there may be little or no ice buildup on aerodynamic surfaces before activation and normal operation of the ice protection system, and little or no aerodynamic degradation. These two means of visually recognizing that icing conditions are present are distinctly different.

D. Non-Consensus Issue 4—Appendix C

The ALPA representative on the FTHWG did not consider that the combination of the proposed regulatory changes and associated proposed advisory material provided a definitive enough description of the required ice accretions, particularly with regard to the variables that must be considered in determining the critical ice accretion for a particular flight phase. The ALPA alternative proposal recommends adding specific references to ''all flight conditions within the operational limits of the airplane'' and ''configuration changes'' to the general ice accretion requirements of proposed part II(a) of appendix C to ensure that the full range of possible accretion locations for atmospheric conditions are considered. The alternative text would read:

> Section 25.21(g) states that if certification for flight in icing conditions is desired, the applicable requirements of subpart B must be met in the icing conditions of appendix C, unless otherwise prescribed. The most critical ice accretion in terms of handling characteristics and performance for each flight phase must be determined, taking into consideration the atmospheric conditions of part I of this appendix, and all flight conditions within the operational limits of the airplane (for example, configuration, configuration changes, speed, angle-of-attack, and altitude). The following ice accretions must be determined:

The NASA research following the Model ATR–72 accident at Roselawn, Indiana, in 1994, observed that decreasing AOA causes an increase in aft ice accretion limit on the upper surface of an airfoil. Likewise, the fact that airflow separation on the negative pressure side (upper surface for a typical wing) is caused by ice accretions on the upper surface is discussed. Research performed by Dr. Michael B. Bragg and others at the University of Illinois has demonstrated significant variation in the effects on airfoil aerodynamics of a simulated ice accretion depending upon its location on the negative pressure side of the airfoil.

Differing airspeeds and high lift device configurations significantly change the AOA and, consequently, the location of the stagnation point around which any ice accretion forms on an airfoil. For normal operation, this should make no difference on surfaces that are protected by the icing system. But for unprotected surfaces, in the failure case and for ice that accumulates prior to normal system operation, changing the location of ice on the negative pressure side of the airfoil may be significant. Procedural restrictions (that is, no holding with flaps extended, speed or configuration restrictions in case of ice system failure, etc.) could be used to limit the configurations necessary to determine the most critical ice accretion. However, the full range of possible accumulation locations must be considered.

In their report on the Embraer Model EMB 120 accident at Monroe, Michigan, in 1997, the NTSB concluded that:

> The icing certification process has been inadequate because it has not required manufacturers to demonstrate the airplane's flight handling and stall characteristics under a sufficiently realistic range of adverse accretion/flight handling conditions. (Finding #27)

The recommendations submitted by the FTHWG, and this proposed rule, consider ice accretions for all phases of flight and all configurations of high lift devices. The proposed rule would require consideration of the effects of the ice accretion during the phases of flight with high lift devices extended. The associated proposed advisory material specifically recommends that natural icing flight testing with high lift devices extended in the approach and landing conditions be conducted.

We do not concur with the alternative discussed above. The research referred to above determined the effect on lift and drag of a spoiler-like shape located at various chord locations of a two dimensional airfoil. (A two dimensional airfoil is a wing with an infinite wingspan, that is, there are no wingtips. It is common practice for wind tunnel testing to use wings that span the test section from one wall of the wind tunnel to the other. Results obtained for a two dimensional airfoil must usually be adjusted to properly represent a real wing.) These data do not support the alternative position because no data were presented in the references to connect either this shape or its location with airplane flight conditions or icing conditions, either inside or outside of proposed appendix C. There were no data showing the effect of the shape on an airfoil with high lift devices extended.

The effect of any shape on a two-dimensional airfoil is much larger than the effect of a similar shape on a complete airplane with high lift devices extended, and the effect of such a shape diminishes with increasing airplane size.

The effect of ice accretions similar to the shapes tested in the referenced report were also considered by the FTHWG when it discussed ice accreted in conditions outside of proposed appendix C. The majority of the FTHWG recommended not including these accretions in the recommendations because the only icing design envelope available is proposed appendix C.

IV. Rulemaking Notices and Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no current new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International

Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 13132, Federalism

The FAA analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

This portion of the preamble summarizes the FAA's analysis of the economic impacts of a proposed rule amending part 25 of 14 CFR to change the regulations applicable to transport category airplanes certificated for flight in icing conditions. It also includes summaries of the initial regulatory flexibility determination. We suggest readers seeking greater detail read the full regulatory evaluation, which is in the docket for this rulemaking.

Introduction

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits that justify its costs, (2) is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (3) would not have a significant economic impact on a substantial number of small entities; (4) would have a neutral impact on international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Total Benefits and Costs of This Rulemaking

The estimated cost of this proposed rule is $66.4 million ($22.0 million in present value at seven percent). The estimated potential benefits of avoiding 13 fatalities are $89.9 million ($23.7 million in present value at seven percent).

Who Is Potentially Affected by This Rulemaking

- Operators of part 25 U.S.-registered aircraft conducting operations under 14 CFR parts 121, 129, 135, and
- Manufacturers of those part 25 aircraft.

Our Cost Assumptions and Sources of Information

This evaluation makes the following assumptions:

- The base year is 2003.
- This proposed rule is assumed to become a final rule in 2 years, and will then be effective immediately.
- The production run for newly certificated airplane models is 20 years.
- The average life of an airplane is 25 years.
- We analyzed the costs and benefits of this proposed rule over the 45-year period (20 + 25 = 45) 2005 through 2049.
- We used a 10-year certification compliance period. For the 10-year life-cycle period, the FAA calculated an average of four new certifications would occur.
- We performed sensitivity analysis on present value discount rates of one, three, and the base case seven percent.
- New airplane certifications will occur in year one of the analysis time period.
- Value of fatality avoided—$3.0 million (Source: ''Treatment of Value of Life and Injury In Economic Analysis,'' (FAA APO Bulletin, February 2002).)

Benefits of This Rulemaking

The benefits of this proposed rule consist of the value of lives saved due to avoiding accidents involving part 25 airplanes operating in icing conditions. We estimate that a total of 13 fatalities could potentially be avoided by adopting the proposed rule. We use $3.0 million as the value of an avoided fatality. Over the 45-year period of analysis, the potential benefit of the proposed rule would be $89.9 million ($23.7 million in present value at seven percent).

Cost of This Rulemaking

We estimate the costs of this proposed rule to be about $66.4 million ($22.0 million in present value at seven percent) over the 45-year analysis period. The total cost of $66.4 million equals the fixed certification costs of $6.7 million incurred in the first year plus the variable annual fuel burn cost of $59.7 million.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. This proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This proposed rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Plain Language

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

Are the requirements in the proposed regulations clearly stated?

- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the NPRM preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **FOR FURTHER INFORMATION CONTACT** section. [new template uses **ADDRESSES**]

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph number 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. Appendixes to the Preamble

APPENDIX I.—LIST OF ACRONYMS USED IN THIS DOCUMENT

[For your reference and ease of reading, the following list defines the acronyms that are used throughout this document. This appendix will not appear in the *Code of Federal Regulations*.]

Acronym	Definition
AC	Advisory Circular.
ACJ	Advisory Circular Joint (issued by JAA).
AFM	Airplane Flight Manual.
ALPA	Air Line Pilots Association.
AMJ	Advisory Material Joint (issued by JAA).
AOA	Angle-of-Attack.
ARAC	Aviation Rulemaking Advisory Committee.
CAS	Calibrated Airspeed.
CS	Certification Specifications (EASA airworthiness standards).
EASA	European Aviation Safety Agency.
FAA	Federal Aviation Administration.
FTHWG	Flight Test Harmonization Working Group.
ICTS	Ice-Contaminated Tailplane Stall.
IPHWG	Ice Protection Harmonization Working Group.
JAA	Joint Aviation Authorities.
JAR	Joint Aviation Requirements (JAA airworthiness standards).
LFE	Limit Flight Envelope.
NASA	National Aeronautics and Space Administration.
NFE	Normal Flight Envelope.
NPA	Notice of Proposed Amendment (issued by JAA or EASA).
NPRM	Notice of Proposed Rulemaking.
NTSB	National Transportation Safety Board.
OFE	Operational Flight Envelope.

APPENDIX I.—LIST OF ACRONYMS USED IN THIS DOCUMENT—Continued

[For your reference and ease of reading, the following list defines the acronyms that are used throughout this document. This appendix will not appear in the *Code of Federal Regulations*.]

Acronym	Definition
SLD	Supercooled Large Drop.
V_1	The maximum speed in the takeoff at which the pilot must take the first action (for example, apply brakes, reduce thrust, deploy speed brakes) to stop the airplane within the accelerate-stop distance. V_1 also means the minimum speed in the takeoff, following a failure of the critical engine at V_{EF}, at which the pilot can continue the takeoff and achieve the required height above the takeoff surface within the takeoff distance.
V_2	Takeoff Safety Speed. (The target speed to be reached by the time the airplane is 35 feet above the takeoff surface.)
V_{DF}/M_{DF}	Demonstrated Flight Diving Speed.
V_{EF}	Engine Failure Speed. The speed at which the critical engine is assumed to fail during takeoff.
V_{FC}/M_{FC}	Maximum Speed for Stability Characteristics.
V_{FE}	Maximum Flaps Extended Speed.
V_{FTO}	Final Takeoff Speed. The speed at which compliance is shown with the final takeoff climb gradient requirements of § 25.121(c).
V_{MC}	Minimum Control Speed with the critical engine inoperative.
V_{MCA}	Air Minimum Control Speed. (Commonly used terminology for V_{MC}.)
V_{MCG}	Ground Minimum Control Speed.
V_{MCL}	Landing Minimum Control Speed.
V_{MO}/M_{MO}	Maximum Operating Limit Speed.
V_{MU}	Minimum Unstick Speed. The minimum airspeed at and above which the airplane can safely lift off the ground and continue the takeoff.
V_R	Rotation Speed. The speed at which the pilot first makes an input to the airplane controls to rotate the airplane to the takeoff pitch attitude.
V_{REF}	Landing Reference Speed.
$V_{S\ 1-g}$	1–g Stall Speed. The calibrated airspeed at which aerodynamic forces alone can support the airplane in 1–g flight.
V_{SR}	Reference Stall Speed. V_{SR} may not be less than $V_{S\ 1-g}$. For airplanes with a device that abruptly pushes the nose down at a selected angle of attack, (for example, a stick pusher), V_{SR} may not be less than 2 knots or 2 percent, whichever is greater, above the speed at which the device operates.
V_{SR0}	Reference Stall Speed in the landing configuration.

APPENDIX 2.—LIST OF TERMS USED IN THIS NPRM

[For the reader's reference and ease of reading, the following list defines terms that are used throughout this document. This appendix will not appear in the *Code of Federal Regulations*.]

Term	Definition
Airfoil	The shape of the wing when looking at its profile.
Airplane handling qualities	The response of the airplane to control inputs as assessed primarily by a pilot evaluating the ease of accomplishing maneuvering tasks. Airplane handling qualities refer to the stability, controllability, and maneuverability of the airplane.
Airplane performance	The capability of the airplane in terms of speeds, distances, weights, flight paths, etc., expressed in terms of characteristics like takeoff and landing distances, en route altitude capability, climb and descent rates, flight paths, fuel burn, payload capability, range, etc.
En route ice	The critical ice accretion appropriate to normal operation of the ice protection system during the en route phase of flight.
Final takeoff ice	The most critical ice accretion appropriate to normal operation of the ice protection system during the final takeoff segment. Ice accretion is assumed to start at liftoff in the takeoff maximum icing conditions of 14 CFR part 25, appendix C, part 1, paragraph (c).
Force reversal	A reversal in the direction of the force that the pilot needs to apply to perform a specified maneuver or achieve a specified load factor. For example, in a maneuver to reduce the load factor, a push force on the pitch control is initially needed to begin the maneuver, but changes to a pull force as the load factor is reduced.
Holding ice	The critical ice accretion appropriate to normal operation of the ice protection system during the holding phase of flight.
Hinge moment	The rotational force about the hinge of a control surface. Depending on the design of the airplane's flight control system, large hinge moments can result in large forces at the pilot's control, and hinge moment reversals can result in forces reversals.
Ice-contaminated tailplane stall	Ice accretions on the tailplane leading to either completely stalled airflow over the horizontal stabilizer, or an elevator hinge moment reversal due to separated flow on the lower surface of the horizontal stabilizer.
Landing ice	The critical ice accretion appropriate to normal operation of the ice protection system during the landing phase of flight. This is usually the same as holding ice.
Load factor	The lift divided by the weight, expressed in units of gravity, or "g." For example, in straight and level flight, the lift equals the weight and the load factor is 1 g.
Pushover maneuver	A maneuver resulting from the pilot applying a push force to the airplane pitch control to pitch the airplane's nose down.
Sandpaper ice	A thin, rough layer of ice.
Stall	Loss of lift caused by the airflow becoming detached from the upper surface of a lifting surface such as a wing or tailplane.

APPENDIX 2.—LIST OF TERMS USED IN THIS NPRM—Continued

[For the reader's reference and ease of reading, the following list defines terms that are used throughout this document. This appendix will not appear in the *Code of Federal Regulations*.]

Term	Definition
Takeoff ice	The critical ice accretion appropriate to normal operation of the ice protection system during the takeoff phase of flight, assuming accretion starts at liftoff in the takeoff maximum icing conditions of 14 CFR part 25, appendix C, part 1, paragraph (c).
Tailplane	The horizontal wing attached to the tail assembly of the airplane.

Appendix 3: Relevant NTSB Recommendations

If adopted, this rulemaking would respond to the following National Transportation Safety Board (NTSB) Safety Recommendations.

1. *Safety Recommendation A–91–87. ''Amend the icing certification rules to require flight tests wherein ice is accumulated in those cruise and approach flap configurations in which extensive exposure to icing conditions can be expected, and require subsequent changes in configuration, to include landing flaps.''* [complete text available in the docket]

This safety recommendation resulted from an accident on December 26, 1989, at Pasco, Washington, where the airplane stalled due to ice-contamination on the tailplane.[6] The radar data revealed that the airplane was in the clouds in icing conditions for almost 9½ minutes. The NTSB determined that the probable cause of this accident was the flightcrew's decision to continue an unstabilized ILS approach that led to a stall, most likely of the horizontal stabilizer, and loss of control at low altitude. Contributing to the stall and loss of control was the accumulation of airframe ice that degraded the aerodynamic performance of the airplane.[7] The airplane was destroyed and the two pilots and all four passengers received fatal injuries. As discussed in more detail later, this notice proposes to require applicants to demonstrate during type certification that their airplane is not susceptible to ice-contaminated tailplane stall.

2. *Safety Recommendation A–98–94. ''Require manufacturers of all turbine-engine driven airplanes (including the EMB–120) to provide minimum maneuvering airspeed information for all airplane configurations, phases, and conditions of flight (icing and non-icing conditions); minimum airspeeds also should take into consideration the effects of various types, amounts, and locations of ice accumulations, including thin amounts of very rough ice, ice accumulated in supercooled large droplet icing conditions, and tailplane icing.''* [complete text available on the NTSB Web site at: *http://ntsb.gov/Recs/letters/1998/A98_88_106.pdf*]

This safety recommendation resulted from an accident on January 9, 1997, near Monroe, Michigan.[8] In that accident, the flightcrew were attempting a turning maneuver and did not know there was ice on the wing's leading edge. With the degraded aerodynamics due to the ice on the wing's leading edge, the airplane was at too low an airspeed to conduct the turning maneuver without stalling. This caused a rapid descent after an uncommanded roll excursion, resulting in a crash. The airplane was destroyed and the 2 flight crewmembers, 1 flight attendant, and 26 passengers all died. The NTSB determined that the probable cause of this accident was the FAA's failure to establish adequate aircraft certification standards for flight in icing conditions, and to require the establishment of adequate minimum airspeed for icing conditions.[9]

As discussed in more detail later, this notice proposes to require applicants to demonstrate during type certification that their airplane has adequate maneuvering capabilities in icing conditions. The requirements added to part 25 by the 1-g stall rule[10] and the requirements proposed in this NPRM would ensure that the minimum operating speeds determined during the certification of all future transport category airplanes provide adequate maneuver capability in both non-icing and icing conditions.

3. *Safety Recommendation A–98–96. ''Require the manufacturers and operators of all airplanes that are certificated to operate in icing conditions to install stall warning/protection systems that provide a cockpit warning (aural warning and/or stick shaker) before the onset of stall when the airplane is operating in icing conditions.''* [complete text available on the NTSB Web site at: *http://ntsb.gov/Recs/letters/1998/A98_88_106.pdf*]

This safety recommendation resulted from the same accident discussed under Safety Recommendation A–98–94, above. The airplane stalled before either the stall warning system or the stall protection system activated. As discussed in more detail later, this notice proposes to require applicants to demonstrate during type certification that their airplane provides adequate warning of an impending stall in icing conditions.

Although we do not currently have a part 25 regulatory requirement for stall warning to be provided by a warning device in the cockpit, general industry design practice is to use a device called a stick shaker to shake the control column to warn the pilot of an impending stall.

XIV. Proposed Amendment

List of Subjects in 14 CFR Part 25:

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704

2. Amend § 25.21 by adding a new paragraph (g) to read as follows:

§ 25.21 Proof of compliance.

* * * * *

(g) The requirements of this subpart associated with icing conditions apply only if certification for flight in icing conditions is desired. If certification for flight in icing conditions is desired, the following requirements also apply:

(1) Each requirement of this subpart, except §§ 25.121(a), 25.123(c), 25.143(b)(1) and (b)(2), 25.149, 25.201(c)(2), 25.207(c) and (d), 25.239, and 25.251(b) through (e), must be met in icing conditions. Compliance must be shown using the ice accretions defined in appendix C, assuming normal operation of the airplane and its ice protection system in accordance with the operating limitations and operating procedures established by the applicant and provided in the Airplane Flight Manual.

(2) No changes in the load distribution limits of § 25.23, the weight limits of § 25.25 (except where limited by performance requirements of this

[6] United Express flight 2415 (Sundance 415), a British Aerospace BA–3101 Jetstream, operated by NPA Inc., (NPA is the name of the airline and is not an abbreviation).

[7] ''Effect of Ice on Aircraft Handling Characteristics (1984 Trials),'' Jetstream 31—G–JSSD, British Aerospace Flight Test Report FTR.177/JM, dated May 13, 1985.

[8] Comair flight 3272, Empresa Brasileira de Aeronautica, S/A (Embraer) EMB–120, operated by COMAIR Airlines, Inc.

[9] National Transportation Safety Board, 1998. ''In-Flight Icing Encounter and Uncontrolled Collision With Terrain, Comair Flight 3272, Embraer EMB–120RT, N265CA, Monroe, Michigan, January 9, 1997.'' Aircraft Accident Report NTSB/AR–98/04. Washington, DC.

[10] Docket No. FAA–2002–13982, published in the **Federal Register** (67 FR 70812, November 26, 2002).

subpart), and the center of gravity limits of § 25.27, from those for non-icing conditions, are allowed for flight in icing conditions or with ice accretion.

3. Amend § 25.103 by revising paragraph (b)(3) to read as follows:

§ 25.103 Stall speed.

* * * * *

(b) * * *

(3) The airplane in other respects (such as flaps, landing gear, and ice accretions) in the condition existing in the test or performance standard in which V_{SR} is being used;

* * * * *

4. Amend § 25.105 by revising paragraph (a) to read as follows:

§ 25.105 Takeoff.

(a) The takeoff speeds prescribed by § 25.107, the accelerate-stop distance prescribed by § 25.109, the takeoff path prescribed by § 25.111, the takeoff distance and takeoff run prescribed by § 25.113, and the net takeoff flight path prescribed by § 25.115, must be determined in the selected configuration for takeoff at each weight, altitude, and ambient temperature within the operational limits selected by the applicant—

(1) In non-icing conditions; and

(2) In icing conditions, if in the configuration of § 25.121(b) with the takeoff ice accretion defined in appendix C:

(i) The stall speed at maximum takeoff weight exceeds that in non-icing conditions by more than the greater of 3 knots CAS or 3 percent of V_{SR}; or

(ii) The degradation of the gradient of climb determined in accordance with § 25.121(b) is greater than one-half of the applicable actual-to-net takeoff flight path gradient reduction defined in § 25.115(b).

* * * * *

5. Amend § 25.107 by revising paragraph (c)(3) and (g)(2) and adding new paragraph (h) to read as follows:

§ 25.107 Takeoff speeds.

* * * * *

(c) * * *

(3) A speed that provides the maneuvering capability specified in § 25.143(h).

* * * * *

(g) * * *

(2) A speed that provides the maneuvering capability specified in § 25.143(h).

(h) In determining the takeoff speeds V_1, V_R, and V_2 for flight in icing conditions, the values of V_{MCG}, V_{MC}, and V_{MU} determined for non-icing conditions may be used.

6. Amend § 25.111 by revising paragraph (c)(3)(iii), (c)(4), and adding a new paragraph (c)(5) to read as follows:

§ 25.111 Takeoff path.

* * * * *

(c) * * *

(3) * * *

(iii) 1.7 percent for four-engine airplanes.

(4) The airplane configuration may not be changed, except for gear retraction and automatic propeller feathering, and no change in power or thrust that requires action by the pilot may be made until the airplane is 400 feet above the takeoff surface; and

(5) If § 25.105(a)(2) requires the takeoff path to be determined for flight in icing conditions, the airborne part of the takeoff must be based on the airplane drag:

(i) With the takeoff ice accretion defined in appendix C, from a height of 35 feet above the takeoff surface up to the point where the airplane is 400 feet above the takeoff surface; and

(ii) With the final takeoff ice accretion defined in appendix C, from the point where the airplane is 400 feet above the takeoff surface to the end of the takeoff path.

* * * * *

7. Revise § 25.119 to read as follows:

§ 25.119 Landing climb: All-engines-operating.

In the landing configuration, the steady gradient of climb may not be less than 3.2 percent, with the engines at the power or thrust that is available 8 seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the go-around power or thrust setting—

(a) In non-icing conditions, with a climb speed of V_{REF} determined in accordance with § 25.125(b)(2)(i); and

(b) In icing conditions with the landing ice accretion defined in appendix C, and with a climb speed of V_{REF} determined in accordance with § 25.125(b)(2)(ii).

8. Amend § 25.121 by revising paragraphs (b), (c), and (d) to read as follows:

§ 25.121 Climb: One-engine inoperative.

* * * * *

(b) *Takeoff; landing gear retracted.* In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted, and in the configuration used in § 25.111 but without ground effect:

(1) The steady gradient of climb may not be less than 2.4 percent for two-engine airplanes, 2.7 percent for three-engine airplanes, and 3.0 percent for four-engine airplanes, at V_2 with:

(i) The critical engine inoperative, the remaining engines at the takeoff power or thrust available at the time the landing gear is fully retracted, determined under § 25.111, unless there is a more critical power operating condition existing later along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(ii) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under § 25.111.

(2) The requirements of paragraph (b)(1) of this section must be met:

(i) In non-icing conditions; and

(ii) In icing conditions with the takeoff ice accretion defined in appendix C, if in the configuration of § 25.121(b) with the takeoff ice accretion:

(A) The stall speed at maximum takeoff weight exceeds that in non-icing conditions by more than the greater of 3 knots CAS or 3 percent of V_{SR}; or

(B) The degradation of the gradient of climb determined in accordance with § 25.121(b) is greater than one-half of the applicable actual-to-net takeoff flight path gradient reduction defined in § 25.115(b).

(c) *Final takeoff.* In the en route configuration at the end of the takeoff path determined in accordance with § 25.111:

(1) The steady gradient of climb may not be less than 1.2 percent for two-engine airplanes, 1.5 percent for three-engine airplanes, and 1.7 percent for four-engine airplanes, at V_{FTO} with—

(i) The critical engine inoperative and the remaining engines at the available maximum continuous power or thrust; and

(ii) The weight equal to the weight existing at the end of the takeoff path, determined under § 25.111.

(2) The requirements of paragraph (c)(1) of this section must be met:

(i) In non-icing conditions; and

(ii) In icing conditions with the final takeoff ice accretion defined in appendix C, if in the configuration of § 25.121(b) with the takeoff ice accretion:

(A) The stall speed at maximum takeoff weight exceeds that in non-icing conditions by more than the greater of 3 knots CAS or 3 percent of V_{SR}; or

(B) The degradation of the gradient of climb determined in accordance with § 25.121(b) is greater than one-half of the applicable actual-to-net takeoff flight path gradient reduction defined in § 25.115(b).

(d) *Approach.* In a configuration corresponding to the normal all-engines-operating procedure in which V_{SR} for

this configuration does not exceed 110 percent of the V_{SR} for the related all-engines-operating landing configuration:

(1) The steady gradient of climb may not be less than 2.1 percent for two-engine airplanes, 2.4 percent for three-engine airplanes, and 2.7 percent for four-engine airplanes, with—

(i) The critical engine inoperative, the remaining engines at the go-around power or thrust setting;

(ii) The maximum landing weight;

(iii) A climb speed established in connection with normal landing procedures, but not exceeding 1.4 V_{SR}; and

(iv) Landing gear retracted.

(2) The requirements of paragraph (d)(1) of this section must be met:

(i) In non-icing conditions; and

(ii) In icing conditions with the holding ice accretion defined in appendix C. The climb speed selected for non-icing conditions may be used if the climb speed for icing conditions, computed in accordance with paragraph (d)(1)(iii) of this section, does not exceed that for non-icing conditions by more than the greater of 3 knots CAS or 3 percent.

9. Amend § 25.123 by revising paragraphs (a) introductory text and (b) to read as follows:

§ 25.123 En route flight paths.

(a) For the en route configuration, the flight paths prescribed in paragraph (b) and (c) of this section must be determined at each weight, altitude, and ambient temperature, within the operating limits established for the airplane. The variation of weight along the flight path, accounting for the progressive consumption of fuel and oil by the operating engines, may be included in the computation. The flight paths must be determined at a speed not less than V_{FTO}, with—

* * * * *

(b) The one-engine-inoperative net flight path data must represent the actual climb performance diminished by a gradient of climb of 1.1 percent for two-engine airplanes, 1.4 percent for three-engine airplanes, and 1.6 percent for four-engine airplanes—

(1) In non-icing conditions; and

(2) In icing conditions with the en route ice accretion defined in appendix C, if:

(i) A speed of 1.18 V_{SR} with the en route ice accretion exceeds the en route speed selected for non-icing conditions by more than the greater of 3 knots CAS or 3 percent of V_{SR}; or

(ii) The degradation of the gradient of climb is greater than one-half of the applicable actual-to-net flight path reduction defined in paragraph (b) of this section.

* * * * *

10. Revise § 25.125 to read as follows:

§ 25.125 Landing.

(a) The horizontal distance necessary to land and to come to a complete stop (or to a speed of approximately 3 knots for water landings) from a point 50 feet above the landing surface must be determined (for standard temperatures, at each weight, altitude, and wind within the operational limits established by the applicant for the airplane):

(1) In non-icing conditions; and

(2) In icing conditions with the landing ice accretion defined in appendix C if V_{REF} for icing conditions exceeds V_{REF} for non-icing conditions by more than 5 knots CAS.

(b) In determining the distance in (a):

(1) The airplane must be in the landing configuration.

(2) A stabilized approach, with a calibrated airspeed of not less than V_{REF}, must be maintained down to the 50-foot height.

(i) In non-icing conditions, V_{REF} may not be less than:

(A) 1.23 V_{SR0};

(B) V_{MCL} established under § 25.149(f); and

(C) A speed that provides the maneuvering capability specified in § 25.143(h).

(ii) In icing conditions, V_{REF} may not be less than:

(A) The speed determined in paragraph (b)(2)(i) of this section;

(B) 1.23 V_{SR0} with the landing ice accretion defined in appendix C if that speed exceeds V_{REF} for non-icing conditions by more than 5 knots CAS; and

(C) A speed that provides the maneuvering capability specified in § 25.143(h) with the landing ice accretion defined in appendix C.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop, porpoise, or water loop.

(5) The landings may not require exceptional piloting skill or alertness.

(c) For landplanes and amphibians, the landing distance on land must be determined on a level, smooth, dry, hard-surfaced runway. In addition—

(1) The pressures on the wheel braking systems may not exceed those specified by the brake manufacturer;

(2) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(3) Means other than wheel brakes may be used if that means—

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(d) For seaplanes and amphibians, the landing distance on water must be determined on smooth water.

(e) For skiplanes, the landing distance on snow must be determined on smooth, dry, snow.

(f) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing, and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(g) If any device is used that depends on the operation of any engine, and if the landing distance would be noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

11. Amend § 25.143 by revising paragraphs (c), (d), (e), (f), and (g), and by adding new paragraphs (h), (i), and (j) to read as follows:

§ 25.143 General.

* * * * *

(c) The airplane must be shown to be safely controllable and maneuverable with the critical ice accretion appropriate to the phase of flight defined in appendix C, and with the critical engine inoperative and its propeller (if applicable) in the minimum drag position:—

(1) At the minimum V_2 for takeoff;

(2) During an approach and go-around; and

(3) During an approach and landing.

(d) The following table prescribes, for conventional wheel type controls, the maximum control forces permitted during the testing required by paragraph (a) through (c) of this section:

Force, in pounds, applied to the control wheel or rudder pedals	Pitch	Roll	Yaw
For short term application for pitch and roll control—two hands available for control	75	50	.....
For short term application for pitch and roll control—one hand available for control	50	25	.....
For short term application for yaw control	.....	.....	150
For long term application	10	5	20

(e) Approved operating procedures or conventional operating practices must be followed when demonstrating compliance with the control force limitations for short term application that are prescribed in paragraph (d) of this section. The airplane must be in trim, or as near to being in trim as practical, in the preceding steady flight condition. For the takeoff condition, the airplane must be trimmed according to the approved operating procedures.

(f) When demonstrating compliance with the control force limitations for long term application that are prescribed in paragraph (d) this section, the airplane must be in trim, or as near to being in trim as practical.

(g) When maneuvering at a constant airspeed or Mach number (up V_{FC}/M_{FC}), the stick forces and the gradient of the stick versus maneuvering load factor must lie within satisfactory limits. The stick forces must not be so great as to make excessive demands on the pilot's strength when maneuvering the airplane, and must not be so low that the airplane can easily be overstressed inadvertently. Changes of gradient that occur with changes of load factor must not cause undue difficulty maintaining control of the airplane, and local gradients must not be so low as to result in a danger of overcontrolling.

(h) The maneuvering capabilities in a constant speed coordinated turn at forward center of gravity, as specified in the following table, must be free of stall warning or other characteristics that might interfere with normal maneuvering:

Configuration	Speed	Maneuvering bank angle in a coordinated turn	Thrust/power setting
Takeoff	V_2	30°	Asymmetric WAT-limited.[1]
Takeoff	V_2 + XX[2]	40°	All-engines-operating climb.[3]
En route	V_{FTO}	40°	Asymmetric WAT-limited.[1]
Landing	V_{REF}	40°	Symmetric for −3° flight path angle.

[1] *A combination of weight, altitude, and temperature (WAT) such that the thrust or power setting produces the minimum climb gradient specified in § 25.121 for the flight condition.*

[2] *Airspeed approved for all-engines-operating initial climb.*

[3] *That thrust or power setting which, in the event of failure of the critical engine and without any crew action to adjust the thrust or power of the remaining engines, would result in the thrust or power specified for the takeoff condition at V_2, or any lesser thrust or power setting that is used for all-engines-operating initial climb procedures.*

(i) When demonstrating compliance with § 25.143 in icing conditions—

(1) Controllability must be demonstrated with the ice accretion defined in appendix C that is most critical for the particular flight phase;

(2) It must be shown that a push force is required throughout a pushover maneuver down to a zero g load factor, or the lowest load factor obtainable if limited by elevator power. It must be possible to promptly recover from the maneuver without exceeding 50 pounds pull control force; and

(3) Any changes in force that the pilot must apply to the pitch control to maintain speed with increasing sideslip angle must be steadily increasing with no force reversals.

(j) For flight in icing conditions before the ice protection system has been activated and is performing its intended function, the following requirements apply:

(1) If activating the ice protection system depends on the pilot seeing a specified ice accretion on a reference surface (not just the first indication of icing), the requirements of § 25.143 apply with the ice accretion defined in appendix C, part II(e).

(2) For other means of activating the ice protection system, it must be demonstrated in flight with the ice accretion defined in appendix C, part II(e) that:

(i) The airplane is controllable in a pull-up maneuver up to 1.5 g load factor; and

(ii) There is no longitudinal control force reversal during a pushover maneuver down to 0.5 g load factor.

12. Amend § 25.207 by revising paragraph (b), revising paragraphs (e) and (f), and adding paragraphs (g) and (h) to read as follows:

§ 25.207 Stall warning.

* * * * *

(b) The warning must be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in paragraph (a) of this section at the speed prescribed in paragraphs (c) and (d) of this section. Except for the stall warning prescribed in paragraph (h)(2)(ii) of this section, the stall warning for flight in icing conditions prescribed in paragraph (e) of this section must be provided by the same means as the stall warning for flight in non-icing conditions.

(c) * * *

(d) * * *

(e) In icing conditions, the stall warning margin in straight and turning flight must be sufficient to allow the pilot to prevent stalling (as defined in § 25.201(d)) when the pilot starts a recovery maneuver not less than three seconds after the onset of stall warning. When demonstrating compliance with this paragraph, the pilot must perform the recovery maneuver in the same way as for the airplane in non-icing conditions. Compliance with this requirement must be demonstrated in flight with the speed reduced at rates not exceeding one knot per second, with—

(1) The en route ice accretion defined in appendix C for the en route configuration;

(2) The holding ice accretion defined in appendix C for the holding and approach configurations;

(3) The landing ice accretion defined in appendix C for the landing and go-around configurations; and

(4) The more critical of the takeoff ice and final takeoff ice accretions defined in appendix C for each configuration used in the takeoff phase of flight.

(f) The stall warning margin must be sufficient in both non-icing and icing conditions to allow the pilot to prevent stalling when the pilot starts a recovery maneuver not less than one second after the onset of stall warning in slow-down turns with at least 1.5 g load factor normal to the flight path and airspeed deceleration rates of at least 2 knots per second. When demonstrating compliance with this paragraph for icing conditions, the pilot must perform the recovery maneuver in the same way as for the airplane in non-icing conditions. Compliance with this requirement must be demonstrated in flight with—

(1) The flaps and landing gear in any normal position;

(2) The airplane trimmed for straight flight at a speed of 1.3 V_{SR}; and

(3) The power or thrust necessary to maintain level flight at 1.3 V_{SR}.

(g) Stall warning must also be provided in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures (including all configurations covered by Airplane Flight Manual procedures).

(h) For flight in icing conditions before the ice protection system has been activated and is performing its intended function, the following requirements apply, with the ice accretion defined in appendix C, part II(e):

(1) If activating the ice protection system depends on the pilot seeing a specified ice accretion on a reference surface (not just the first indication of icing), the requirements of this section apply, except for paragraphs (c) and (d) of this section.

(2) For other means of activating the ice protection system, the stall warning margin in straight and turning flight must be sufficient to allow the pilot to prevent stalling without encountering any adverse flight characteristics when the speed is reduced at rates not exceeding one knot per second and the pilot performs the recovery maneuver in the same way as for flight in non-icing conditions.

(i) If stall warning is provided by the same means as for flight in non-icing conditions, the pilot may not start the recovery maneuver earlier than one second after the onset of stall warning.

(ii) If stall warning is provided by a different means than for flight in non-icing conditions, the pilot may not start the recovery maneuver earlier than 3 seconds after the onset of stall warning. Also, compliance must be shown with § 25.203 using the demonstration prescribed by § 25.201, except that the deceleration rates of § 25.201(c)(2) need not be demonstrated.

13. Amend § 25.237 by revising paragraph (a) to read as follows:

§ 25.237 Wind velocities.

(a) For landplanes and amphibians, the following applies:

(1) A 90-degree cross component of wind velocity, demonstrated to be safe for takeoff and landing, must be established for dry runways and must be at least 20 knots or 0.2 V_{SRO}, whichever is greater, except that it need not exceed 25 knots.

(2) The crosswind component for takeoff established without ice accretions is valid in icing conditions.

(3) The landing crosswind component must be established for:

(i) Non-icing conditions, and

(ii) Icing conditions with the landing ice accretion defined in appendix C.

* * * * *

14. Amend § 25.253 by revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 25.253 High-speed characteristics.

* * * * *

(b) *Maximum speed for stability characteristics.* V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of §§ 25.143(g), 25.147(e), 25.175(b)(1), 25.177, and 25.181 must be met with flaps and landing gear retracted. Except as noted in § 25.253(c), V_{FC}/M_{FC} may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF}, except that for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

(c) *Maximum speed for stability characteristics in icing conditions.* The maximum speed for stability characteristics with the ice accretions defined in appendix C, at which the requirements of §§ 25.143(g), 25.147(e), 25.175(b)(1), 25.177, and 25.181 must be met, is the lower of:

(1) 300 knots CAS;

(2) V_{FC}; or

(3) A speed at which it is demonstrated that the airframe will be free of ice accretion due to the effects of increased dynamic pressure.

15. Amend § 25.773 by revising paragraph (b)(1)(ii) to read as follows:

§ 25.773 Pilot compartment view.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(ii) The icing conditions specified in § 25.1419 if certification for flight in icing conditions is requested.

* * * * *

16. Amend § 25.941 by revising paragraph (c) to read as follows:

§ 25.941 Inlet, engine, and exhaust compatibility.

* * * * *

(c) In showing compliance with paragraph (b) of this section, the pilot strength required may not exceed the limits set forth in § 25.143(d), subject to the conditions set forth in paragraphs (e) and (f) of § 25.143.

17. Amend § 25.1419 by revising the introductory text to read as follows:

§ 25.1419 Ice protection.

If certification for flight in icing conditions is desired, the airplane must be able to safely operate in the continuous maximum and intermittent maximum icing conditions of appendix C. To establish this—

* * * * *

18. Amend appendix C of part 25 by adding a new part I heading and a new paragraph (c) to part I; and adding a new part II to read as follows:

Appendix C of Part 25

Part I—Atmospheric Icing Conditions

(a) * * *

(c) *Takeoff maximum icing.* The maximum intensity of atmospheric icing conditions for takeoff (takeoff maximum icing) is defined by the cloud liquid water content of 0.35 g/m^3, the mean effective diameter of the cloud droplets of 20 microns, and the ambient air temperature at ground level of minus 9 degrees Celsius (−9°C). The takeoff maximum icing conditions extend from ground level to a height of 1,500 feet above the level of the takeoff surface.

Part II—Airframe Ice Accretions for Showing Compliance With Subpart B

(a) *Ice accretions—General.* Section 25.21(g) states that if certification for flight in icing conditions is desired, the applicable requirements of subpart B must be met in the icing conditions of appendix C. The most critical ice accretion in terms of handling characteristics and performance for each flight phase must be determined, taking into consideration the atmospheric conditions of part I of this appendix, and the flight conditions (for example, configuration, speed, angle-of-attack,

and altitude). The following ice accretions must be determined:

(1) *Takeoff ice* is the most critical ice accretion on unprotected surfaces, and any ice accretion on the protected surfaces appropriate to normal ice protection system operation, occurring between liftoff and 400 feet above the takeoff surface, assuming accretion starts at liftoff in the takeoff maximum icing conditions of part I, paragraph (c) of this appendix.

(2) *Final takeoff* ice is the most critical ice accretion on unprotected surfaces, and any ice accretion on the protected surfaces appropriate to normal ice protection system operation, between 400 feet and 1,500 feet above the takeoff surface, assuming accretion starts at liftoff in the takeoff maximum icing conditions of part I, paragraph (c) of this appendix.

(3) *En route ice* is the critical ice accretion on the unprotected surfaces, and any ice accretion on the protected surfaces appropriate to normal ice protection system operation, during the en route phase.

(4) *Holding ice* is the critical ice accretion on the unprotected surfaces, and any ice accretion on the protected surfaces appropriate to normal ice protection system operation, during the holding flight phase.

(5) *Landing ice* is the critical ice accretion on the unprotected surfaces, and any ice accretion on the protected surfaces appropriate to normal ice protection system operation following exit from the holding flight phase and transition to the final landing configuration.

(6) *Sandpaper ice* is a thin, rough layer of ice.

(b) In order to reduce the number of ice accretions to be considered when demonstrating compliance with the requirements of § 25.21(g), any of the ice accretions defined in paragraph (a) of this section may be used for any other flight phase if it is shown to be more conservative than the specific ice accretion defined for that flight phase.

(c) The ice accretion that has the most adverse effect on handling characteristics may be used for airplane performance tests provided any difference in performance is conservatively taken into account.

(d) *Ice accretions for the takeoff phase.* For both unprotected and protected parts, the ice accretion may be determined by calculation, assuming the takeoff maximum icing conditions defined in appendix C, and assuming that:

(1) Airfoils, control surfaces and, if applicable, propellers are free from frost, snow, or ice at the start of the takeoff;

(2) The ice accretion starts at liftoff;

(3) The critical ratio of thrust/power-to-weight;

(4) Failure of the critical engine occurs at V_{EF}; and

(5) Crew activation of the ice protection system is in accordance with a normal operating procedure provided in the Airplane Flight Manual, except that after beginning the takeoff roll, it must be assumed that the crew takes no action to activate the ice protection system until the airplane is at least 400 feet above the takeoff surface.

(e) *Ice accretion before the ice protection system has been activated and is performing its intended function.* The ice accretion before the ice protection system has been activated and is performing its intended function is the ice accretion formed on the unprotected and normally protected surfaces before activation and effective operation of the ice protection system in continuous maximum atmospheric icing conditions.

Issued in Washington, DC, on October 24, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–21793 Filed 11–3–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.21–1X, Performance and Handling Characteristics in the Icing Conditions Specified in Part 25, Appendix C

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.21–1X and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that provides methods acceptable to the Administrator related to the proposed certification requirements for performance and handling characteristics of transport category airplanes affected by flight in the icing conditions defined in appendix C of Title 14, Code of Federal Regulations (CFR) part 25. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before January 3, 2006.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Don Stimson, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98055–4056. Comments may also be submitted electronically to the following address: *don.stimson@faa.gov.* Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Don Stimson at the above address, telephone (425) 227–2143; facsimile (425) 227–1320, or e-mail at: *don.stimson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25.21–1X, and submit comments, in duplicate, to the address specified above. The Transport Standards Staff will consider all communications received on or before the closing date for comments before issuing the final AC. The AC can be found and downloaded from the Internet at: *www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Harmonization of Standards and Guidance

The proposed AC is based on recommendations submitted to the FAA by the Aviation Rulemaking Advisory Committee (ARAC). The FAA tasked ARAC (63 FR 50954, September 23, 1998) to provide advice and recommendations on ''harmonizing'' certain sections of part 25 (including section 25.21) with the counterpart standards contained in Joint Aviation Requirements (JAR) 25. The goal of ''harmonization tasks,'' such as this, is to ensure that:

1. Where possible, standards and guidance do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and

2. The standards and guidance adopted are mutually acceptable to the FAA and the foreign aviation authorities;

3. the guidance contained in the proposed AC has been harmonized with that of the JAA, and provides a method of compliance that has been found acceptable to both the FAA and JAA.

Discussion

This proposed AC sets forth acceptable methods of compliance with the provisions of 14 CFR 25.21 dealing with the certification requirements for performance and handling characteristics of transport category airplanes affected by flight in icing conditions defined in appendix C.

It is one means, but not the only means, of complying with the revisions proposed in Notice No. 05–10 entitled ''Airplane Performance and Handling Qualities in Icing Conditions,'' published in this same edition of the **Federal Register**. Issuance of AC 25–21–1 is contingent of final adoption of the proposed revisions to part 25. Other methods of compliance with the requirements may be acceptable.

In addition, a separate Notice of Availability of Proposed Revisions to AC 25–7A, ''Flight Test Guide for Certification of Transport Category Airplanes,'' will be published in the **Federal Register** when issued. In that proposed AC, the FAA proposes removing the icing-related guidance from AC 25—7A because that material is addressed by the NPRM Notice No. 05–10, ''Airplane Performance and Handling Qualities In Icing Conditions'' and proposed AC 25.21–1, ''Performance And Handling Characteristics In The Icing Conditions Specified In Part 25, Appendix C.''

Issued in Washington, DC, on October 27, 2005.

John Hickey,

Director, Aircraft Certification Service.

[FR Doc. 05–21791 Filed 11–3–05; 8:45 am]

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Federal Register

Friday,
November 4, 2005

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 82

Regulations Governing the California Clingstone Peach (Tree Removal) Diversion Program; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 82

[Docket No. FV05–82–01 FR]

RIN 0581–AC45

Regulations Governing the California Clingstone Peach (Tree Removal) Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule provides procedures for a California Clingstone Peach Diversion Program. The program will be voluntary and consist entirely of tree removal. The program will be implemented under clause (3) of Section 32 of the Act of August 24, 1935, as amended. Based on 2003 and prior season acreage, production, supply, and marketing information for California clingstone peaches, this program is expected to bring the domestic canned peach supply more in line with the market and provide relief to growers faced with excess acreage and supplies, and with low prices. The program will ensure that removal is not part of the normal process of tree replacement.

EFFECTIVE DATE: November 5, 2005.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *George.Kelhart@usda.gov.*; or Kurt Kimmel, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901; Fax: (559) 487–5906; or e-mail: *Kurt.Kimmel@usda.gov.*

Small businesses may request information on the proposed diversion program by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This 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 (OMB). In accordance with Executive Order 12866, the Department of Agriculture (USDA) has prepared a detailed regulatory impact cost-benefit assessment, which can be obtained by contacting the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule. USDA also prepared a civil rights impact analysis. This document also can be obtained by following the same procedure.

Public Law 104–4

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 and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires federal agencies 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.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State and local governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which will otherwise impede its full implementation. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Authority for a Diversion Program

This program is intended to reestablish the purchasing power of California clingstone peach growers who suffered from excess acreage, supplies, and low prices in 2003. Programs to reestablish the purchasing power of U.S. farmers are authorized by clause (3) of Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), hereinafter referred to as ''Section 32.'' Clause (3) authorizes USDA to ''* * * reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.'' Section 32 also authorizes USDA to use Section 32 funds ''* * * at such times, and in such manner, and in such amounts, as USDA finds will effectuate substantial accomplishments of any one or more of the purposes of this section.'' Furthermore, ''Determinations by USDA as to what constitutes * * * normal production for domestic consumption shall be final.''

Need for a Diversion Program

Domestic production of clingstone peaches is concentrated in California. Although there are more than 200 peach varieties, there are two basic types: Clingstone and freestone. Clingstone peaches—so named because their flesh ''clings'' to the stone, or pit—are almost exclusively canned due to their ability to retain flavor and textural consistency. Other relatively minor uses include frozen peaches, baby food, and fruit concentrate for juice. Freestone peaches—so named because their flesh is readily removed from the stone—are primarily produced for the fresh market, with secondary outlets including the frozen and dried fruit market.

Although peaches are grown commercially in more than 30 states, the National Agricultural Statistics Service (NASS) reported that, in 2003, California produced about 74 percent of all peaches grown in the U.S. Other significant peach producing states, including South Carolina, Georgia, New

Jersey, Pennsylvania, and Washington, had a combined production of a little less than 17 percent of the U.S. total. As noted earlier, clingstone peach production is concentrated in California, which claims over 95 percent of the domestic production.

NASS reports that U.S. production of all peaches in 2004 totaled a little over 1.279 million tons, of which 949 thousand tons were produced in California. In comparison, California clingstone peach production in 2004 totaled 539 thousand tons.

The U.S. is the largest producer of canned peaches in the world. However, foreign imports of canned clingstone peaches are providing an increasingly important volume of competition for the U.S. industry. Greece, the world's second largest producer of canned peaches, has been the largest exporter to the U.S., followed by Spain, South Africa, China, and Thailand (re-manufactured product). According to a February 2001 report by the Foreign Agricultural Service, the U.S. has become a net importer of canned peaches, with exports averaging around 20 thousand tons and imports averaging approximately 21 thousand tons.

The California Canning Peach Association (CCPA) requested the diversion program on behalf of the clingstone peach industry. Established in 1922, the CCPA is a nonprofit cooperative bargaining association, owned and directed by its member growers. The CCPA negotiates an annual grower price and otherwise operates on behalf of its nearly 600 members, who produce approximately 80 percent of the clingstone peaches grown in California.

Specifically, the industry requested that USDA provide funding for a tree removal program during 2004. Implementation was not possible at that time, but the diversion program will begin November 5, 2005 and grower applications to participate will be due on November 30, 2005. After receiving the CCPA's written notification approving grower tree pull applications, growers may participate in the program. The tree removals will have to be completed by June 1, 2006. CCPA believes that the program will provide relief to the peach growers who have been displaced from domestic and international markets. CCPA cited continuing market disruption and deteriorating economic conditions during 2003 for peach growers as reasons for the diversion program. The CCPA stated that the steadily increasing supply of low-priced foreign canned peaches, as well as high production costs and high levels of domestic production have resulted in record amounts of unsold fruit.

The industry's difficulty is due in part to the high cost of domestic production coupled with high levels of plantings between 1998 and 2002, and in part to the increased supply of low-priced canned peaches from other nations. Labor costs (more than ⅔ of growers' direct production costs), as well as the costs of energy, chemicals, fertilizer, and equipment have climbed dramatically over the last few years. Producer prices have not kept pace with these increases. Moreover, as processing costs have increased, canners have been forced to raise their selling prices, thus providing a more attractive domestic market for low-priced imports and a more attractive market for clingstone peaches in countries traditionally supplied by the U.S. industry (Mexico, Canada, and Japan, for example).

As previously noted, the U.S. has become a net importer of canned peaches due to several factors, including unfavorable exchange rates, subsidized Greek over-production, and low-cost Chinese production. The large increase in imports has resulted in a diminished need for domestic production with the consequence of record volumes of fruit not being sold. Imports are expected to continue to increase while the export of canned clingstone peaches, as well as clingstone peaches for canning, is anticipated to stay steady or decline. Exports to Mexico and other Central American countries—both canned peaches and peaches for canning—are being priced out by Greece, while exports to Asian markets are facing strong price competition from both Greece and China. Increasing levels of both domestic and foreign production coupled with diminished export demand (world demand for canned fruit is flat outside of the European Union) will lead to continued surplus situations for a number of years.

Young, recently planted clingstone peach trees are more productive than older trees. This results in actual production volume increasing rapidly in proportion to the increase in acreage. Due to an industry-wide belief that the canned peach market would be taking a turn for the better, farmers planted an average of 3,526 acres of clingstone peach trees per year between 1998 and 2002. Although much of this acreage has been offset with concurrent acreage reduction, the net result over the last ten years is an increase of about 4,000 acres. This extra peach acreage is not needed, however, because of the slow demand growth in the canned fruit sector and the increasing pressure from imports. The recent bankruptcy of Tri-Valley Growers (one of the major peach processors in California) has also greatly impacted the industry's ability to process the extra peach production.

Once planted, it takes clingstone peach trees 3 years to produce fruit in commercial quantities. Once a peach grower has committed funds to the planting and maintenance of an orchard, it is difficult to reverse those decisions and recoup cost. Because supply is slow to adjust to changing market conditions, without some remedial action the industry anticipates many years of production outpacing demand, resulting in a continuation, if not a worsening, of disruptive market conditions.

Industry Self-Help Initiatives

The California clingstone peach industry has taken a number of steps on its own to deal with oversupply issues. Since 1993, the industry has spent over $17 million to remove more than 10,000 acres of trees. In fact, the industry sponsored a tree pull in the spring of 2005 resulting in the removal of 2,000 additional acres. Although the CCPA administered some industry initiated acreage removal programs that compensated growers, many growers carried the costs of tree removal themselves. As noted earlier, even with aggressive tree removal, net acreage is currently up by about 2,000 acres over what it was a decade ago. Ten years ago, the number of acres was 28,100. The CCPA has also initiated and helped fund research projects aimed at reducing labor costs in the orchards, funded export incentive programs, and, as of 2004, its growers have limited new plantings to the lowest level in more than 50 years (only 580 acres planted in 2004, and an estimated 890 acres will be planted in 2005). To further improve its long-term market position, the California peach industry plans on developing new processing technology as well as new and innovative uses for clingstone peaches other than canning.

Despite these recent self-help efforts at mitigating the supply and demand imbalance, production of clingstone peaches has continued to be significantly greater than normal market needs. In fact, during both 2001 and 2002 50 million pounds of clingstone peaches were harvested but could not be sold, and in 2003 the unutilized quantity was 61 million pounds. The unsold portions represented 5.3, 4.5, and 5.9 percent, respectively, of the total crops in each of those years. In 2004, all of the clingstone peach production harvested was utilized.

The California clingstone peach industry is in need of the immediate relief USDA can provide. A diversion

program wholly consisting of a reduction in acreage through the removal of bearing trees will assist the industry in restoring a more balanced supply-demand situation for the clingstone peach industry in the short- and long-term.

Tree Removal Diversion Program

The industry is requesting $5 million in federal funds to fund a voluntary tree removal program, including administrative costs. In addition, a total of $2 million from CCPA assessments on its grower-members (to be collected and remitted by processors based on 2005 season deliveries) will be used to augment the federal funds.

The industry expects to remove 4,000 bearing acres of clingstone peach trees, or a little over 13 percent of the 30,200 acres currently in production. A healthy peach tree lives for about 20 years and reaches peak production when between 8 and 12 years old. Many of the current bearing trees are reaching the age where the normal cycle of removing old trees followed by replanting will be considered. The diversion program will provide an incentive to growers to remove healthy, fruit bearing trees rather than those near the end of their productive life, while ensuring that those orchards are not replanted with clingstone peach trees.

To be eligible for the tree removal program, growers must have made deliveries to processors during 2005. Orchards that have been abandoned will not be eligible for participation. Growers will be paid $100/ton based on their actual 2005 peach deliveries to processors from the same acreage that is being removed, provided that payments will not exceed $1,700 per acre nor be less than $500 per acre. Trees will have to be removed prior to June 1, 2006, and to be eligible must be bearing and have been planted after 1987 and before 2003. Thus, trees removed under this program will be at least three years old but less than 18 years old.

Growers who participate in the diversion program and subsequently replant a clingstone peach tree in the same location, and within the 10-year period following removal of the trees, will be required to refund to USDA all payments received, plus interest, on replanted acreage. Because it takes new trees at least three years to be commercially productive, this provision will effectively remove the acreage participating in the diversion program from commercial production of clingstone peaches for at least 13 years.

As previously stated, the tree removal program is expected to reduce California clingstone peach acreage by up to 4,000 acres, which, based on the most recent 10-year average annual yield of 17.5 tons per acre, could reduce annual production by approximately 70,000 tons. This one-time decrease in production will help align supply with demand, while also ensuring an adequate supply. In addition, this program will provide the clingstone peach industry with the economic opportunity to concentrate its efforts on rebuilding demand for the future.

The diversion program will be administered by AMS and CCPA. Any California clingstone peach grower wishing to participate in the program will file an application with the CCPA on a form approved by OMB. The application period will begin after publication of the final rule announcing the terms and conditions of the program. Applications must be submitted by November 30, 2005.

Each applicant will provide information needed by the CCPA to operate the program. This will include, for example, the location of the orchard from which trees will be removed, the acreage to be removed, and the tonnage harvested off the applicable acreage in 2005. Applicants will also certify that all equity holders in the participating acreage consent to the filing of the application, and will agree not to replant clingstone peach trees on the same acreage for 10 years after the trees were removed. The CCPA will review each application for completeness, and will make every reasonable effort to contact growers to obtain any missing information.

Each approved applicant will be notified by the CCPA on another form approved by OMB. The approved grower will be required to fill out a portion of this ''notification'' form, certifying to the CCPA that he/she had removed the clingstone peach trees, and the date of removal. The remainder of this form will be filled out by a CCPA staff member. The staff member will verify that the approved block of clingstone peach trees had been removed, list the equivalent 2005 delivery tons removed, and indicate the total amount of money due to the grower. To verify that trees are eligible for the program, a CCPA representative may sample one or more trees in the block by taking a cross section of the base of the tree after it has been cut down and counting the tree rings to determine the age of the tree. In addition, the CCPA and USDA may verify the age of the trees in the block by relying on grower records, and may use any other means deemed necessary to confirm the eligibility of the trees.

As noted earlier, the USDA will provide $5 million to fund the tree removal program, including administrative costs. Applications will be approved until the available USDA and CCPA funds have been committed. Each participating grower will have until June 1, 2006, to remove trees from their land.

Growers will be paid $100 per ton based on their actual peach deliveries to processors of peaches that were harvested in 2005 from the acreage involved in the tree removal program. Based on the conditions of program participation, payments to growers will range from $500 to $1,700 per acre, which should cover most of the costs of removing the trees as well as preparing the land for other uses. Thus, even if a grower had a yield greater than 17 tons per acre on the acreage selected for removal, payment will not exceed the maximum of $1,700 per acre established by this rule.

Conversely, if a selected block of land had a 2005 yield of 5 tons per acre or less, the grower will receive the minimum of $500 per acre. The $100 per ton payment, as well as the upper and lower limits to the amount paid per acre, are considered necessary to help ensure that enough growers participate in the tree removal program. The costs of participating in the program will vary depending on the number of acres removed. Some cost savings may accrue when larger blocks of acreage are removed.

Estimated costs for tree removal, including the removal of roots and associated debris, range from $325-$525 per acre. In addition, costs associated with preparing the ground for other crops, including leveling, fumigation, and weed control could cost between $1,050 and $1,875. Based on these estimates, grower costs associated with tree removal could total as much as $2,400 per acre. The $500-$1,500 per acre payment under the program will offset a significant portion of each grower's costs associated with tree removal.

Further offsetting the costs of tree removal will be the economic opportunities afforded the grower associated with being positioned to plant alternative crops on the cleared acreage. Additionally, the current economic conditions within the industry, specifically weak demand, reduced per capita consumption, stagnant domestic shipments and exports, increasing low-priced imports, and declining grower prices and revenues will appear to limit the incentives for replanting acreage to clingstone peach trees.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 700 growers of clingstone peaches in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000. Based on 2003 data from the California Agricultural Statistics Service, all of the growers will be considered small growers with annual incomes under $750,000. Thus, the majority of the growers are considered small entities under SBA's definition.

This rule will establish a tree removal diversion program for California clingstone peaches. Authority for this program is provided in clause (3) of Section 32 of the Act of August 24, 1935, as amended.

Participation in the diversion program is voluntary, so individual producers, both large and small, can weigh the benefits and costs for their own operations before deciding whether to participate in the program.

Economic Assessment of the Diversion Program

To assess the impact a tree removal program will have on prices growers receive for their product, impacts on grower prices and inventories with a tree removal program and without a tree removal program were estimated. This economic assessment compares the benefits and costs of a tree removal program to the alternative of not having a tree removal program. An econometric model was also developed for the purpose of estimating nominal season average grower prices under both scenarios.

Although a tree removal program will directly reduce the number of bearing acres, the impact of the program will not be apparent until after the 2006 crop harvest. In 2004, bearing acres are estimated at 31,740 acres. The industry has indicated that no additional net plantings of clingstone peach trees are occurring at this time. However, trees planted in 2002 through 2004 will enter production in 2005 through 2007.

The tree removal analysis assumes that 4,000 acres of clingstone peach orchards will be removed through this program. This results in the reduction in bearing acreage from 31,740 to 30,480. This number is estimated by taking the bearing acreage of 31,740, subtracting the proposed tree removal acreage (4,000) and adding the acreage planted in 2002 (2,740 acres), which will start producing in 2005. Subsequent years' bearing acreage is estimated using the same process; i.e., adding estimated acres planted three years earlier to existing bearing acreage.

Under the proposed program, acreage in 2010 is estimated to total 28,256. It is assumed that the industry will only replant trees that were removed due to old age. However, it is not likely that all trees removed due to age will be replaced, and further, that trees removed due to age will not be involved in the tree removal program.

Production for 2004 is reported by NASS at 539,000 tons. Carryin inventory for 2004 was reported by CCPA to be 3.44 million cases (24 No. 2½ size cans; No. 2½ cans have a net weight of 27–29 ounces).

Based on historical pack-out and per capita consumption, CCPA has estimated that demand for the 2005 clingstone peach crop could approximate 460,000 tons. Subsequent demand for canned peaches is estimated to increase by about one percent a year for 2006 through 2010. This assumes that per capita consumption remains constant while demand increases with the level of population.

The 2005 clingstone peach production, however, is estimated at 530,000 tons based on the reduced acreage projection of 30,480 acres and an estimated yield of 18.53 tons per acre. For this analysis, the estimated carryin is 3 million cases (24 No. 2½ basis) for 2005 and 2 million cases (24 No. 2½ basis) for 2006 through 2010, which is the desirable level favored by the industry.

Acreage removed after 2006 is estimated based on an econometric model. Despite the removal of 4,000 acres in the diversion program, the industry will conceivably continue to remove acreage on its own due to normally aging orchards.

The analysis also estimates yields based on an autoregressive model of order two that allows for some fluctuations up and down. Yields under the proposed tree removal program are adjusted upwards by 0.2 tons per acre due to the removal of lower yielding trees which will result in higher average yields than will happen without a program. Estimated production, computed by multiplying acreage times yield, fluctuates accordingly.

As carryin inventories are reduced, the total available supply will moderate for 2006 through 2010, relative to the situation without a tree removal program. This results in estimated season average grower prices ranging from $224 to $245 per ton during that same time span. This estimated price is slightly more than the total estimated cost of production. It should be noted that the margin of error for these estimates becomes very large for future years.

Even though season-average grower prices per ton increase under the tree removal program, all product produced is not necessarily of marketable quantity. Costs are incurred on all of the production, but revenue is received only on product actually marketed. Thus, the economic effect of the tree removal program on a per acre basis is to dramatically reduce losses and bring producer returns closer to a break-even level. With the level of imports anticipated to continue to increase and with the level of exports anticipated to continue to decrease, there should be only a limited incentive to further expand production as a result of the tree removal program. It will remain for growers to control costs and to expand demand to ensure their longer-term economic stability and viability.

Grower prices are a small component of the marketable canned peach product and are not closely associated with movements in retail prices. However, the increases in grower prices estimated for 2006 through 2010 may have an impact on retail prices. The extent of any retail price increases will depend on processor and retailer margins, as well as the pricing and availability of substitute canned fruit products. It should be noted that clingstone peach prices are estimated to increase with or without a tree removal program, but the magnitude of the grower price increase is greater with the program. This increase in retail price may have a slight negative impact on the quantity demanded. Such a decrease in the quantity demanded is not taken into account in this analysis.

Without a tree removal program in place, the number of bearing acres is also estimated to decrease, although at a rate slower than with a tree removal program. This decrease in bearing acreage is estimated by taking the number of producing acres during the prior year, subtracting the number of acres removed from production and then adding the number of acres planted three seasons previously. For 2006 through 2010, production is estimated to decrease due to the decline in the number of bearing acres. However,

marketable production will continue to be above the estimated 460,000 tons desired by the industry and carryin inventories are estimated as high as 3.5 million cases (24 No. 2½ basis).

In addition, abandonment of some product is estimated to occur for 2005 through 2010. Under this scenario, 2005 grower prices are estimated at $220 per ton. With high inventories and low grower prices, market forces are assumed to induce growers to remove less productive acres and the number of bearing acres is estimated to decline from to 31,740 to 29,068. Even with the decline in bearing acres, production and inventories remain excessive from 2006 through 2010. Under this scenario, grower prices are estimated to remain below or equal to the cost of production until 2010 when prices are estimated to be just above the cost of production.

Under both scenarios, grower prices increase. However, adjustments to inventories and prices occur more rapidly under a tree removal program. This will accelerate benefits to growers until market forces could bring about a slow correction.

In addition to the direct impact a tree removal program will have on grower price and revenue, there are indirect impacts. A tree removal program assists in decreasing the volume of fruit that is harvested but subsequently not utilized or simply not harvested. Without a tree removal program, large quantities of clingstone peaches could be produced and harvested but not utilized by packers. Growers will have to cover the total cost of production, harvest, and transportation but only receive payments on fruit actually canned. Further, in an attempt to sell the excessive inventories, packers might reduce f.o.b. prices, which in turn leads to market share battles and lower prices being passed back to producers. A more balanced supply and demand situation allows growers and packers to jointly continue developing markets in ways that benefit the entire industry.

Benefits of the Program

The economic assessment of the tree removal program indicates that it is expected to benefit growers (particularly small, under-capitalized growers), canners, and others associated with the clingstone peach industry. The per ton sales price is projected to increase over the next six years, thus reducing losses and moving grower returns closer to break-even levels. The benefit to growers from reduced losses is projected to total approximately $50 million over the six-year period. The benefits over the six-year period will average nearly $8 million annually.

Costs of the Program

The major direct cost of the program will be the payment to growers for removing their clingstone peach trees. A total of $5 million, less the costs associated with local administration of the program, will be made available by USDA for the tree removal program. Administrative costs for reviewing applications and verifying tree removals are expected to be about $125,000. Major expense categories for administration include costs for salaries and benefits, vehicle rental and maintenance, and insurance, overhead, and supplies.

Total grower costs associated with the completion of diversion program applications, payment requests, and record maintenance for the period specified after tree removal are expected to be about $530.

Overall Assessment of the Program

Payments made through this program could help California clingstone peach growers by addressing the oversupply problem that is adversely affecting their industry. The implementation of a tree removal program could reduce available supply more quickly than if the industry relied on market forces alone. While market forces could also result in supplies being reduced, such an adjustment may occur more slowly, with resultant economic hardships for growers and processors. In addition, a tree removal program could be beneficial in reducing the risk of loan default for lenders that financed clingstone peach growers. This program could also help small, under-capitalized growers stay in business.

Increasing the level of profitability also should provide opportunities for the industry to engage in additional demand-enhancing activities, especially directed at the domestic market. Even a moderate increase in domestic per capita consumption will have a significant, positive impact on grower returns.

Costs for the program will include the $7 million ($5 million provided by USDA and $2 million by the industry) to be paid to growers and to the CCPA for administrative costs. Additionally, growers will incur costs totaling $500 to comply with the application and record-keeping requirements of the program.

Benefits to growers under the tree removal program could total approximately $50 million. This is calculated by multiplying total marketable production for each of the next six years times the difference between grower price and variable cost, and then adding those figures. This calculation was done for each of the two scenarios (with and without a tree removal program). The $50 million difference between those figures represents an estimate of program benefits resulting from reduced grower losses.

Growers who participate in the tree pull program will likely remove older, less productive trees from production. Because younger trees are more productive, older trees typically have higher variable costs of production than younger trees, where the variable costs are spread over a higher yield. Accordingly, the $50 million benefit under the tree pull scenario is the result of both higher prices resulting from the tree pull combined with lower variable costs per ton of production.

This cost calculation assumes that the acreage on which trees are removed remains idle, and that growers will therefore absorb all fixed costs on that acreage. To the extent that the land is put to other productive uses, growers will not be absorbing all fixed costs of producing clingstone peaches, and grower benefits will be higher.

If growers are earning more income, it follows that processors will pay more to obtain the peaches from the growers. These higher costs could be passed on to consumers through higher retail prices or could be absorbed as reduced operating margins for processors, wholesalers, or retailers. An estimate of these costs is obtained by multiplying the estimated grower price over each of the next six years times annual shipments with the diversion program in place and without it in place. That figure, summed over the six years, is approximately $25 million. Processors, wholesalers, and retailers are anticipated to absorb the additional costs. Adjustments in retail prices, as well as retailer and processor margins, are anticipated to change with or without the program.

Another cost of the tree removal program is the reduced economic activity due to the growers purchasing fewer inputs (labor, chemicals, etc.) because of the reduction in the number of clingstone peach acres managed and harvested. Farm laborers and agricultural supply firms such as chemical manufacturers and distributors will realize less revenue because of the reduced need for their services and goods. To the extent that acreage removed is replanted in other crops, those costs could be somewhat offset by purchases of labor and supplies to produce the alternative crops. This cost of the tree removal program is difficult to quantify and is not included in this analysis.

Conclusion

Based on all of the information available, USDA has determined that there is a surplus of clingstone peaches, and that reestablishment of growers' purchasing power will be encouraged by using Section 32 funds to reduce supplies under a tree removal program for California clingstone peaches. USDA has further determined that this program will be a long-term solution to the oversupply situation that exists in the California clingstone peach industry, and that it will provide relief to growers.

Each grower participating in the program will agree not to replant clingstone peaches on the land from which the trees were removed for 10 years from the date the trees are removed. The non-planting promise is a guarantee by the participant that no one (not just the participant) will plant the land to clingstone peaches. Only those persons who are current owners of the land, and have not contracted to sell the land or destroy the trees, will be eligible to participate. Also, growers will guarantee that they have not made prior arrangements to sell the land or remove the trees for commercial purposes, like shopping centers, housing developments, or similar such purposes. Including such non-agricultural land in the program will not serve the purposes of the tree removal program.

Notice of this action was published in the **Federal Register** on August 3, 2005 (70 FR 44525). Interested persons were invited to submit written comments until September 2, 2005. Six comments were received. Two of those comments were received from the California Canning Peach Association, the association that requested financial support from USDA for the tree removal program. The other comments were received from a vendor of fruits and vegetables, and producers and processors of clingstone peaches.

In one of the association's comments, it requested several changes to the proposal. It pointed out that its original request specified that the maximum age of eligible trees was 18, but that the proposed rule changed that age to 17. The final rule has been modified to reflect the association's initial intent. A maximum clingstone peach tree age of 18 is expected to facilitate participation in the program. In addition, the association requested that two additional association office locations be listed to facilitate the receipt and review of grower applications in the production area. These office locations, telephone, and fax numbers have been added to the regulatory text. It also requested that the implementation process start immediately after tree removal applications have been approved. This was USDA's intent and this has been clarified in the final rule. In addition, USDA has added language regarding verifying the eligibility of trees to be removed. To verify that trees are eligible for the program, an association representative may sample one or more trees in the block by taking a cross section of the base of the tree after it has been cut down and counting the tree rings to determine the age of the tree. In addition, the association and USDA may verify the age of the trees in the block by relying on grower records, and may use any other means deemed necessary to confirm the eligibility of the trees.

In another comment, the association provided additional information in support of the diversion program. It indicated that it is much more cost effective for USDA to deal with the clingstone peach industry's supply/demand imbalance by funding the $5 million tree removal program than it would be to spend nearly $30 million per year buying surplus finished product (clingstone peaches) from processors.

One commenter stated that the program will be an effective solution to the industry's oversupply problem and will help growers survive in the long term. Another commenter stated that the industry's acreage exceeds market demand and the removal program will help bring the clingstone peach supply in line with market needs and reduce current high inventory levels.

Another commenter requested changes to the program to allow clingstone peach growers to remove trees by grafting their trees over to other fruits, such as nectarines or plums, rather than removing the trees entirely. The commenter states that considering grafting as removal under the program would be more enticing to him than removing an orchard. Grafting was not considered to be a method of removal when developing the program. The program contemplates removal of the trees and the roots of the trees, and the basis for calculating the payments per tree includes costs for removing the entire tree. Therefore, the definition of removal continues to exclude grafting as a method of removal.

One commenter did not support implementing the proposed program at this time. The commenter believes that implementation now might result in an overcorrection of the supply imbalance. According to the commenter, reducing the raw product supply too much could result in the increased importation of foreign produced peaches. This could displace domestic production and shrink the California peach grower base even more. Also, if fewer peaches are available for processors, this could increase manufacturing costs, and lead to decreased consumption and demand.

The commenter states that a significant reduction is forecasted for the 2005 peach crop due to weather changes and this already accounts for a reduction in volume that exceeds the proposed program. The commenter estimates that the 2005 harvest will be approximately 476,000 tons. The USDA projects this figure to actually be 530,000 tons and large enough to warrant implementation at this time without an overcorrection in supplies.

The opposing commenter also blames the dried prune/plum tree removal program in 2002 for the current low production in the industry. The dried prune/plum industry has experienced two years of extremely low yields due to unusual weather conditions during the bloom in spring. Yields in 2004 are reported by NASS at 0.70 tons per acre, which is a record low yield. Thus, the industry would have experienced a supply shortage even if the 17,448 bearing acres had not been removed in 2002.

From 1988 through 2003 total dried prune/plum shipments ranged from 170,000 to 180,000 tons. Given the expectation of production in excess of 200,000 tons, the industry faced a severe surplus situation. Supply is slow to adjust to changing market conditions given the substantial fixed investment in orchards. The tree removal program assisted the dried prune/plum industry in making the adjustment to lower production more rapidly than awaiting market adjustment.

The California clingstone peach industry faces a similar situation as dried prune/plum growers did in 2002. Over the past several years, the clingstone peach industry has suffered from record amounts of unsold product due to low-priced, imported canned peaches and high domestic production. This situation is leading to low grower prices and revenues that are expected to continue to deteriorate. During the 2001 and 2002 seasons, 50 million pounds of clingstone peaches were harvested but could not be sold, and 61 million pounds were unutilized in 2003. The percent of unutilized production for each of those years is 5.3 percent, 4.5 percent, and 5.9 percent.

Though there is indication of a decline in clingstone peach bearing acres for the 2005–06 crop year, there were a large number of trees planted from 1998 through 2002 that are only

starting to produce fruit and this situation is expected to adversely affect grower prices unless the tree removal program is implemented. Clingstone peach acres are expected to continue to decline but it's anticipated this will occur at a slower pace than with a tree removal program. The proposed program provides an incentive for growers to remove healthy, fruit bearing trees rather than those at the end of their productive life and ensuring those orchards are not replanted with clingstone peach trees for 10 years.

Although clingstone peach production may be down for the 2005–06 crop year (NASS final production information will not be available until January 2006), the tree removal program attempts to solve a long run over-production problem for a number of years. The program is expected to help align supply with demand and improve grower returns at a faster pace. The benefit to growers from reduced losses is projected to be approximately $50 million over the six-year period from 2005 to 2010, which is an average of nearly $8 million annually.

In view of the foregoing, and after considering all of the comments presented, the USDA has decided not to postpone the tree removal program, but as indicated has made changes where appropriate. The changes made based on the comments received are expected to improve the program and to help the program better accomplish the objectives intended. The only changes made by the final rule clarify eligibility and removal requirements as discussed above.

After consideration of all relevant matter presented, including the comments received, and other information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the policy of 7 U.S.C. 612c.

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this rule. Such delay will be contrary to the public interest because clingstone peach producers need to know as soon as possible whether they will be accepted into the program. Eligible interested producers want to begin removing the clingstone peach trees as soon as possible. In addition, further delay could jeopardize the successful removal of excess clingstone peach production.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS has obtained approval from OMB of a new information collection, California Clingstone Peach (Tree Removal) Diversion Program, under OMB No. 0581–0232.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

As mentioned earlier, two forms will be needed for the administration of the tree removal program. Growers who wish to participate in the program will have to submit form FV–302, ''Application for Clingstone Peach Tree Removal Program,'' along with documentation, to the CCPA, which will administer the program. Upon receipt of FV–302, the CCPA will send the grower form FV–303, ''Notification of Clingstone Peach Tree Removal.'' The grower will fill out a portion of this form certifying that his/her approved block of clingstone peach trees was removed, and the date of removal. The remainder of this form will be filled out by a CCPA staff member, notifying the grower of his/her eligibility to receive a diversion payment. The form will also be used to notify USDA that the CCPA verified the grower's compliance with program regulations and recommend disbursement of Section 32 funds to the grower. Finally, participants will be required to retain records pertaining to the tree removal program for 10 years after the date the trees were removed.

We estimate that 100 growers may submit applications, and that it will take each grower about 30 minutes to complete, for a total burden of 50 hours. We also estimate that it will take the growers about 2 minutes to complete their portion of the notification form, for a total burden of 3 hours. The estimated one-time cost for all growers in completing the participation application and payment request statement (notification form), and maintaining records, is $530. This total cost was calculated by multiplying the estimated 53 burden hours by $10 per hour (a sum deemed reasonable, should the applicants be compensated for this time).

Comments were invited on the information collection in the August 3, 2005, notice of proposed rulemaking. The deadline for comments ended on October 3, 2005, and no comments were received.

List of Subjects in 7 CFR Part 82

Administrative practice and procedures, Agriculture, Peaches, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ For the reasons set forth in the preamble, Title 7, Subtitle B, Chapter 1 is amended as follows:

PART 82—[AMENDED]

■ 1. In Subtitle B, Chapter 1, Part 82 is added to read as follows:

PART 82—CLINGSTONE PEACH DIVERSION PROGRAM

Sec.
82.1 Applicability.
82.2 Administration.
82.3 Definitions.
82.4 Length of program.
82.5 General requirements.
82.6 Rate of payment; total payments.
82.7 Eligibility for payment.
82.8 Application and approval for participation.
82.9 Inspection and certification of diversion.
82.10 Claim for payment.
82.11 Compliance with program provisions.
82.12 Inspection of premises.
82.13 Records and accounts.
82.14 Offset, assignment, and prompt payment.
82.15 Appeals.
82.16 Refunds; joint and several liability.
82.17 Death, incompetency or disappearance.

Authority: 7 U.S.C. 612c.

§ 82.1 Applicability.

Pursuant to the authority conferred by Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32), the Agricultural Marketing Service (AMS) will make payment to California growers who divert clingstone peaches by removing trees on which the fruit is produced in accordance with the terms and conditions set forth herein.

§ 82.2 Administration.

The program will be administered under the general direction and supervision of the Deputy Administrator, Fruit and Vegetable Programs, AMS, United States Department of Agriculture (USDA), and will be implemented by the California Canning Peach Association (CCPA). The CCPA, or its authorized representatives, does not have authority to modify or waive any of the provisions of this subpart. The Administrator or delegatee, in the Administrator's or delegatee's sole discretion can modify deadlines to serve the goals of the program. In all cases, payments under this part are subject to the availability of funds.

§ 82.3 Definitions.

(a) *Administrator* means the Administrator of AMS.

(b) *AMS* means the Agricultural Marketing Service of the U.S. Department of Agriculture.

(c) *Application* means ''Application for Clingstone Peach Tree Removal Program.''

(d) *Calendar year* means the 12-month period beginning January 1 and ending the following December 31.

(e) *CCPA* means the California Canning Peach Association, a grower-owned marketing and bargaining cooperative representing the clingstone peach industry in California.

(f) *Diversion* means the removal of clingstone peach trees after approval of applications by the CCPA.

(g) *Grower* means an individual, partnership, association, or corporation in the State of California who grows clingstone peaches for canning.

(h) *Removal or removed* means that the clingstone peach trees are no longer standing and capable of producing a crop, and the roots of the trees have been removed. The grower can accomplish removal by any means the grower desires. Grafting another type of tree to the rootstock remaining after removing the clingstone peach tree will not qualify as removal under this program.

§ 82.4 Length of program.

This program is effective November 5, 2005, through November 9, 2015. Growers diverting clingstone peaches by removing clingstone peach trees must complete the diversion no later than June 1, 2006.

§ 82.5 General requirements.

(a) To be eligible for this program, the trees to be removed must be fruit-bearing and have been planted after the 1987 and before the 2003 calendar years. Abandoned orchards and dead trees will not qualify. The block of trees for removal must be easily definable by separations from other blocks of eligible trees and contain at least 1,000 eligible trees or an entire orchard. Clingstone peach tree removal shall not take place until the grower has been informed in writing that the grower's application has been approved.

(b) Any grower participating in this program must agree not to replant clingstone peach trees on the land cleared under this program through June 1, 2016. Participants bear responsibility for ensuring that trees are not replanted, whether by themselves, by successors to the land, or by any other person, until after June 1, 2016. If trees are replanted before June 1, 2016, by any persons, participants must refund all USDA payments, with interest, made in connection with this tree removal program.

§ 82.6 Rate of payment; total payments.

(a) Applications will be processed on a first-come, first-served basis. Growers will be paid $100 per ton based on their actual 2005 deliveries of clingstone peaches to processors from those acres of clingstone peach trees removed under this program, except that, regardless of actual 2005 deliveries, growers will receive a minimum of $500 per acre and a maximum of $1,700 per acre.

(b) Payment under paragraph (a) of this section will only be made after tree removal has been verified by the staff of the CCPA.

(c) The $100 per ton payment is intended to cover the costs of tree removal. USDA will not make any other payment with respect to such removals. The grower will be responsible for arranging, requesting, and paying for the tree removal in the specified acreage.

(d) Total payments under this program are limited to not more than $5,000,000 of Section 32 funds. No additional expenditures shall be made unless the Administrator or delegatee in their sole and exclusive discretion shall, in writing, declare otherwise.

§ 82.7 Eligibility for payment.

(a) If total applications for payment do not exceed $5,000,000, less administration costs, payments, as set forth in § 82.6, will be made under this program to any grower of clingstone peaches who complies with the requirements in § 82.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed $5,000,000, less administration costs, the CCPA will approve the applications (subject to the requirements in § 82.8) in the order in which the completed applications are received in the CCPA office to the extent that funds are available. Applications received after total outlays exceed the amount of money available will be denied.

§ 82.8 Application and approval for participation.

(a) Applications will be reviewed for program compliance and approved or disapproved by CCPA office personnel.

(b) Applications for participation in the Clingstone Peach Diversion Program can be obtained from the CCPA office at 2300 River Plaza Drive, Suite 110, Sacramento, CA 95833; Telephone: (916) 925–9131; Fax: (916) 925–9030; at 335 Teegarden Avenue, Suite A, Yuba City, CA 95991; Telephone: (530) 673–8526; Fax: (530) 673–2673; or at 1704 Herndon Road, Ceres, CA 95307; Telephone: (209) 537–0715; Fax: (209) 537–1043.

(c) Any grower desiring to participate in the Clingstone Peach Diversion Program must file an application with the CCPA prior to November 30, 2005. The application shall be accompanied by a copy of any two of the following four documents: Plot Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number, and tax identification number or social security number of the grower;

(2) The location and amount of acreage to be diverted;

(3) The 2005 clingstone peach production from the acreage to be diverted;

(4) If the land with respect to which the clingstone peach trees will be destroyed is subject to a mortgage, statutory lien, or other equity interest, the grower must obtain from the holder of such interest a written statement that such party agrees to the enrollment of such land in this program to the extent determined necessary by AMS. Obtaining such assent shall be the responsibility of the applicant who shall alone bear any responsibilities which may extend to such third parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the clingstone peach diversion program;

(6) The applicant shall sign the application certifying that the information contained in the application is true and correct;

(7) The year that the clingstone peach acreage to be diverted was planted;

(8) The names of the processors who received the clingstone peaches from the grower in 2005.

(d) After the CCPA receives the applications, it shall review them to determine whether all the required information has been provided and that the information is correct.

(e) If the deliveries off the acreage to be removed in such applications, multiplied by $100 per ton (for actual 2005 deliveries on these acres, but within the constraints of a minimum payment of $500 per acre and a maximum payment of $1,700 per acre), exceed the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the CCPA offices.

(f) After the application reviews and confirmation of eligible trees are completed, the CCPA shall notify the applicant, in writing, as to whether or not the application has been approved

and the tonnage approved for payment after removal. If an application is not approved, the notification shall specify the reason(s) for disapproval.

§ 82.9 Inspection and certification of diversion.

When the removal of the clingstone peach trees is complete, the grower will notify the CCPA on a form provided by the CCPA. The CCPA will certify that the trees approved for removal from the acreage have been removed, and notify AMS.

§ 82.10 Claim for payment.

To obtain payment for the trees removed, the grower must submit to the CCPA by July 31, 2006, a completed form provided by the CCPA. Such form shall include the CCPA's certification that the qualifying trees from the acreage have been removed. AMS will then issue a check to the grower in the amount of $100 per eligible ton removed consistent with the minimum and maximum payments per acre earlier specified in this part.

§ 82.11 Compliance with program provisions.

If USDA or the CCPA determines that any provision of this part have not been complied with by the grower, the grower will not be entitled to diversion payments in connection with tree removal. If a grower does not comply with all the terms of this part, including the requirement specified in § 82.5(b), the grower must refund any payment made in connection with this program, and will also be liable for any other damages incurred as a result of such failure. The USDA may deny any grower the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if the USDA determines that:

(a) The grower has failed to properly remove the clingstone peach trees from the applicable acreage, regardless of whether such failure was caused directly by the grower or by any other person or persons;

(b) The grower has not acted in good faith, or has engaged in a scheme, fraud, or device, in connection with any activity under this program; or

(c) The grower has failed to discharge fully any obligation assumed by him or her under this program.

§ 82.12 Inspection of premises.

The grower must permit authorized representatives of USDA or the CCPA, at any reasonable time, to have access to their premises to inspect and examine the acreage where the trees were removed as well as any records pertaining to that acreage to determine compliance with the provisions of this part.

§ 82.13 Records and accounts.

(a) The growers participating in this program must keep accurate records and accounts showing the details relative to the clingstone peach tree removal, including the contract entered into with any firm removing the trees, as well as the invoices.

(b) The growers must permit authorized representatives of USDA, the CCPA, and the Government Accountability Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for ten years after the date of payment to the grower under the program, or for ten years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the grower at any time will be at the risk of the grower when there is reason to know, believe, or suspect that matters may be or could be in dispute or remain in dispute.

§ 82.14 Offset, assignment, and prompt payment.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the grower or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a grower under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

§ 82.15 Appeals.

Any grower who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination. The Deputy Administrator of Fruit and Vegetable Programs shall establish the procedure for such appeals.

§ 82.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any grower shall be refunded to AMS together with interest.

(b) All growers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any grower under this part if AMS determines that payments or other assistance were provided to a grower who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available to such grower. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS determines that the cause of the erroneous determination was not due to any action of the grower.

(d) Interest determined in accordance with paragraph (c) of this section may be waived on refunds required of the grower when there was no intentional noncompliance on the part of the grower, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for, those claims which are addressed in 14 CFR part 1403.

(f) Growers must refund to AMS any excess payments, as determined by AMS, with respect to such application. Such determinations shall be made by the Administrator or delegatee.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the grower, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest, subject to paragraphs (c) and (d) of § 82.6.

§ 82.17 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a clingstone peach grower that is eligible to receive benefits in accordance with this part, any person or persons who will, under 7 CFR part 707 of this title, be eligible for payments and benefits covered by this part, may receive such benefits otherwise due the actual producer, as determined appropriate by AMS.

Dated: October 31, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–21978 Filed 11–3–05; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Friday,
November 4, 2005

Part V

Department of Transportation

Federal Transit Administration

49 CFR Part 601

Organization, Functions, and Procedures; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 601

[Docket FTA–2005–22705]

RIN 2132–AA79

Organization, Functions, and Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will amend 49 CFR Part 601 to reflect modifications in the organization and distribution of functions within the Federal Transit Administration (FTA), and to document its rulemaking procedures. This rule has not been amended since 1999, and recently there has been a restructuring of offices and duties within FTA. Additionally, many of FTA's regional offices have physically moved to different locations; thus, this rule revises the addresses and phone numbers of the regional offices. Further, the outdated internal delegations of authority have been removed, the means by which the public can access FTA information has been updated, and FTA's rulemaking procedures are provided.

EFFECTIVE DATE: The effective date of this rule is November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Graves, Attorney-Advisor, Legislation and Regulations Division, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Room 9316, Washington, DC 20590, phone: (202) 366–4011, fax: (202) 366–3809, or e-mail, *Bonnie.Graves@fta.dot.gov.*

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

You may download this rule from the Department's Docket Management System (*http://dms.dot.gov*) by entering docket number 22705 in the search field or from Government Printing Office's **Federal Register** Main Page at *http://www.gpoaccess.gov/fr/index.html.* Users may also download an electronic copy of this document using a modem and suitable communications software from the GPO Electronic Bulletin Board Service at (202) 512–1661.

Justification for Immediate Adoption

This final rule is ministerial in nature and relates only to agency management, organization, procedure, and practice. This is not a regulation or rule for the purposes of Executive Order No. 12866. Therefore, under 5 U.S.C. 553(b)(3)(A), this rule is exempt from notice and comment rulemaking requirements. The changes made will have no substantive effect on the public; therefore, under 5 U.S.C. 553(d), this rule may become effective less than 30 days after publication in the **Federal Register**.

I. Background.

Part 601 was most recently updated in 1999, when section 601.4, Responsibilities of the Administrator, was revised subsequent to passage of the Federal Vacancies Reform Act of 1998. The rule was amended previously in 1982 when Subpart C, Public Availability of Information was added. Contact information and descriptions of the functions and duties of the offices within FTA has not been updated since 1976.

With passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) on August 10, 2005 (Pub. L. 109–59; 119 Stat. 1144), Congress directed FTA to engage in significant rulemaking activities. To date, FTA has not formally outlined its procedures for rulemaking. Adopting these procedures gives the public knowledge of the rulemaking process and how to participate in that process. Part 601 will specify the procedures for notices of proposed rulemaking and adoption of final rules, as well as procedures by which FTA may expedite the processing of non-controversial changes to its regulations. Rules that the Administrator of FTA judges to be unlikely to result in public comment would be published as direct final rules. Such direct final rules would advise the public that no adverse comment is anticipated and that, unless written adverse comment or notice of intent to submit such comment is received within a specified number of days, the rule will become effective 60 days from the date of publication in the **Federal Register**. The rulemaking procedures adopted by FTA today are consistent with other DOT modal administrations' rulemaking procedures.

II. Rulemaking Overview/Summary of Rule Changes

This rulemaking amends Subpart A to reflect changes in the organization of FTA and the physical relocation of many regional offices. It eliminates the Delegations of Authority in Subpart B. Subpart C, Public Availability of Information, is being moved to Subpart B, and the procedures are being updated. This rule provides a new Subpart C, Rulemaking Procedures.

III. Regulatory Process Matters

Executive Order 12866

Since this final rule is ministerial in nature and relates only to agency management, organization, procedure and practice, FTA has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures.

Regulatory Flexibility Act

This rule merely makes administrative changes to FTA's internal policies and procedures, therefore, FTA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking. There are no costs associated with this rule.

Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit ''http://dms.dot.gov''.

List of Subjects in 49 CFR Part 601

Administrative Practice and Procedure, Organization and Functions (Government agencies), Freedom of Information.

■ For the reasons stated in the preamble, the Federal Transit Administration revises 49 CFR Part 601 as set forth below:

PART 601—ORGANIZATION, FUNCTIONS, AND PROCEDURES

Subpart A—General

Sec.
601.1 Purpose
601.2 Organization of the Administration
601.3 General responsibilities
601.4 Responsibilities of the Administrator

Subpart B—Public Availability of Information

601.10 Sources of Information

Subpart C—Rulemaking Procedures

601.20 Applicability
601.21 Definitions.
601.22 General.
601.23 Initiation of rulemaking.

601.24 Contents of notices of proposed rulemaking.
601.25 Participation by interested persons.
601.26 Petitions for extension of time to comment.
601.27 Contents of written comments.
601.28 Consideration of comments received.
601.29 Additional rulemaking proceedings.
601.30 Hearings.
601.31 Adoption of final rules.
601.32 Petitions for rulemaking or exemptions.
601.33 Processing of petition.
601.34 Petitions for reconsideration.
601.35 Proceedings on petitions for reconsideration.
601.36 Procedures for direct final rulemaking.

Authority: 5 U.S.C. § 552; 49 U.S.C. 5334; 49 U.S.C. 1657, 1659; Reorganization Plan No. 2 of 1968 (82 Stat. 1369); 49 CFR 1.51.

Subpart A—General Provisions

§ 601.1 Purpose.

This part describes the organization of the Federal Transit Administration (''FTA''), an operating administration within the U.S. Department of Transportation. This part also describes general responsibilities of the various offices of which FTA is comprised. In addition, this part describes the sources and locations of available FTA program information, and provides information regarding FTA's rulemaking procedures.

§ 601.2 Organization of the Administration

(a) The headquarters organization of FTA is comprised of eight principal offices which function under the overall direction of the Federal Transit Administrator (''the Administrator'') and Deputy Administrator. These offices are:

(1) Office of Administration.

(2) Office of Budget and Policy.

(3) Office of Chief Counsel.

(4) Office of Civil Rights.

(5) Office of Communications and Congressional Affairs.

(6) Office of Planning and Environment.

(7) Office of Program Management.

(8) Office of Research, Demonstration and Innovation.

(b) FTA has ten regional offices, each of which function under the overall direction of the Administrator and Deputy Administrator, and under the general direction of a Regional Administrator. In addition, FTA has established a Lower Manhattan Recovery Office, which is under the general direction of the Director for this office.

Region/States	Office/address	Telephone No.
I. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	FTA Regional Administrator, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093.	(617) 494–2055
II. New York, New Jersey, and U.S. Virgin Islands	FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10014–1415.	(212) 668–2170
III. Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.	FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124.	(215) 656–7100
IV. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee.	FTA Regional Administrator, Atlanta Federal Center, Suite 17T50, 61 Forsyth Street, SW., Atlanta, GA 30303.	(404) 562–3500
V. Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin.	FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606.	(312) 353–2789
VI. Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	FTA Regional Administrator, 819 Taylor Street, Room 8A36, Fort Worth, TX 76102.	(817) 978–0550
VII. Iowa, Kansas, Missouri, and Nebraska	FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106.	(816) 329–3920
VIII. Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.	FTA Regional Administrator, Dept. of Transportation, FTA, 12300 W. Dakota Ave., Suite 310, Lakewood, CO 80228–2583.	(720) 963–3300
IX. Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands.	FTA Regional Administrator, 201 Mission Street, Suite 310, San Francisco, CA 94105.	(415) 744–3133
X. Alaska, Idaho, Oregon, and Washington	FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002.	(206) 220–7954
Lower Manhattan Recovery Office	FTA LMRO Director, One Bowling Green, Room 436, New York, NY 10004.	(212) 668–1770

§ 601.3 General Responsibilities.

The general responsibilities of each of the offices which comprise the headquarters organization of FTA are:

(a) *Office of Administration.* Directed by an Associate Administrator for Administration, this office develops and administers comprehensive programs to meet FTA's resource management and administrative support requirements in the following areas: Organization and management planning, information resources management, human resources, contracting and procurement, and administrative services.

(b) *Office of Budget and Policy.* Directed by an Associate Administrator for Budget and Policy, this office is responsible for policy development and performance measurement, strategic and program planning, program evaluation, budgeting, and accounting. The office provides policy direction on legislative proposals and coordinates the development of regulations. The office formulates and justifies FTA budgets within the Department of Transportation, to the Office of Management and Budget, and Congress. The office establishes apportionments and allotments for program and administrative funds, ensures that all funds are expended in accordance with Administration and congressional intent, and prepares and coordinates statutory reports to Congress. The office coordinates with and supports the Department of Transportation Chief Financial Officer on all FTA accounting and financial management matters. This office also serves as the audit liaison in responding to the Office of the Inspector General and the Government Accountability Office.

(c) *Office of Chief Counsel.* Directed by a Chief Counsel, this office provides legal advice and support to the Administrator and FTA management. The office is responsible for reviewing development and management of FTA-sponsored projects; representing the Administration before civil courts and administrative agencies; drafting and reviewing legislation and regulations to implement the Administration's programs; and working to ensure that the agency upholds the highest ethical standards. The office coordinates with and supports the U.S. Department of

Transportation's General Counsel on FTA legal matters.

(d) *The Office of Civil Rights.* Directed by a Director for Civil Rights, this office ensures full implementation of civil rights and equal opportunity initiatives by all recipients of FTA assistance, and ensures nondiscrimination in the receipt of FTA benefits, employment, and business opportunities. The office advises and assists the Administrator and other FTA officials in ensuring compliance with applicable civil rights regulations, statutes and directives, including but not limited to the Americans with Disabilities Act of 1990 (ADA), the Civil Rights Act of 1964, Disadvantaged Business Enterprise (DBE) participation, and Equal Employment Opportunity, within FTA and in the conduct of Federally-assisted public transportation projects and programs. The office monitors the implementation of and compliance with civil rights requirements, investigates complaints, conducts compliance reviews, and provides technical assistance to recipients of FTA assistance and members of the public.

(e) *Office of Communications and Congressional Affairs.* Directed by an Associate Administrator for Communications and Congressional Affairs, this office is the agency's lead office for media relations, public affairs, and Congressional relations, providing quick response support to the agency, the public, and Members of Congress on a daily basis. The office distributes information about FTA programs and policies to the public, the transit industry, and other interested parties through a variety of media. This office also coordinates the Administrator's public appearances and is responsible for managing correspondence and other information directed to and issued by the Administrator and Deputy Administrator.

(f) *Office of Planning and Environment.* Directed by an Associate Administrator for Planning and Development, this office administers a national program of planning assistance that provides funding, guidance, and technical support to State and local transportation agencies. In partnership with the Federal Highway Administration (FHWA), this office oversees a national program of planning assistance and certification of metropolitan and statewide planning organizations, implemented by FTA Regional Offices and FHWA Divisional Offices. The office provides national guidance and technical support in emphasis areas including planning capacity building, financial planning, transit oriented development, joint development, project cost estimation, travel demand forecasting, and other technical areas. This office also oversees the Federal environmental review process as it applies to transit projects throughout the country, including implementation of the National Environmental Policy Act (NEPA), the Clean Air Act, and related laws and regulations. The office provides national guidance and oversight of planning and project development for proposed major transit capital fixed guideway projects, commonly referred to as the New Starts program. In addition, this office is responsible for the evaluation and rating of proposed projects based on a set of statutory criteria, and applies these ratings as input to the Annual New Starts Report and funding recommendations submitted to Congress, as well as for FTA approval required for projects to advance into preliminary engineering, final design, and full funding grant agreements.

(g) *Office of Program Management.* Directed by an Associate Administrator for Program Management, this office administers a national program of capital and operating assistance by managing financial and technical resources and by directing program implementation. The office coordinates all grantee directed guidance, in the form of circulars and other communications, develops and distributes procedures and program guidance to assist the field staff in grant program administration and fosters responsible stewardship of Federal transit resources by facilitating and assuring consistent grant development and implementation nationwide (Statutory, Formula, Discretionary and Earmarks). This office manages the oversight program for agency formula grant programs and provides national expertise and direction in the areas of capital construction, rolling stock, and risk assessment techniques. It also assists the transit industry and State and local authorities in providing high levels of safety and security for transit passengers and employees through technical assistance, training, public awareness, drug and alcohol testing and state safety oversight.

(h) *Office of Research, Demonstration, and Innovation.* Directed by an Associate Administrator for Research, Demonstration and Innovation, this office provides transit industry leadership in delivery of solutions that improve public transportation. The office undertakes research, development, and demonstration projects that help to increase ridership; improve capital and operating efficiencies; enhance safety and emergency preparedness; and better protect the environment and promote energy independence. The office leads FTA programmatic efforts under the National Research Programs (49 U.S.C. 5314).

§ 601.4 Responsibilities of the Administrator.

The Administrator is responsible for the planning, direction and control of the activities of FTA and has authority to approve Federal transit grants, loans, and contracts. The Deputy Administrator is the ''first assistant'' for purposes of the Federal Vacancies Reform Act of 1998 (Pub. L. 105–277) and shall, in the event of the absence or disability of the Administrator, serve as the Acting Administrator, subject to the limitations in that Act. In the event of the absence or disability of both the Administrator and the Deputy Administrator, officials designated by the agency's internal order on succession shall serve as Acting Deputy Administrator and shall perform the duties of the Administrator, except for any non-delegable statutory and/or regulatory duties.

Subpart B—Public Availability of Information

§ 601.10 Sources of information.

(a) *FTA guidance documents.* (1) Circulars and other guidance/policy information are available on FTA's Web site: *http://www.fta.dot.gov.*

(2) Single copies of any guidance document may be obtained without charge by calling FTA's Administrative Services Help Desk, at (202) 366–4865.

(3) Single copies of any guidance document may also be obtained without charge upon written request to the Associate Administrator for Administration, Federal Transit Administration, 400 7th Street SW., Room 9107, Washington, DC, 20590, or to any FTA regional office listed in § 601.2.

(b) *DOT Docket Management System.* Unless a particular document says otherwise, the following rulemaking documents in proceedings started after February 1, 1997, are available for public review and copying at the Department of Transportation's Docket Management System, Room PL 401, 400 7th Street SW., Washington, DC 20590, or for review and downloading through the Internet at *http://dms.dot.gov:*

(1) Advance notices of proposed rulemaking;

(2) Notices of proposed rulemaking;

(3) Comments received in response to notices;

(4) Petitions for rulemaking and reconsideration;

(5) Denials of petitions for rulemaking and reconsideration; and

(6) Final rules.

(c) Any person may examine docketed material, at any time during regular business hours after the docket is established, and may obtain a copy of such material upon payment of a fee, except material ordered withheld from the public under section 552(b) of Title 5 of the United States Code.

(d) Any person seeking documents not described above may submit a request under the Freedom of Information Act (FOIA) by following the procedures outlined in 49 CFR Part 7.

Subpart C—Rulemaking Procedures

§ 601.20 Applicability.

This part prescribes rulemaking procedures that apply to the issuance, amendment and revocation of rules under an Act.

§ 601.21 Definitions.

Act means statutes granting the Secretary authority to regulate public transportation.

Administrator means the Federal Transit Administrator, the Deputy Administrator or the delegate of either of them.

§ 601.22 General.

(a) Unless the Administrator, for good cause, finds a notice is impractical, unnecessary, or contrary to the public interest, and incorporates such a finding and a brief statement of the reasons for it in the rule, a notice of proposed rulemaking must be issued, and interested persons are invited to participate in the rulemaking proceedings involving rules under an Act.

(b) For rules for which the Administrator determines that notice is unnecessary because no adverse public comment is anticipated, the direct final rulemaking procedure described in § 601.36 of this subpart may be followed.

§ 601.23 Initiation of rulemaking.

The Administrator initiates rulemaking on his/her own motion. However, in so doing, he/she may, in his/her discretion, consider the recommendations of his/her staff or other agencies of the United States or of other interested persons.

§ 601.24 Contents of notices of proposed rulemaking.

(a) Each notice of proposed rulemaking is published in the **Federal Register**, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the **Federal Register** or personally served, includes:

(1) A statement of the time, place, and nature of the proposed rulemaking proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 601.25 Participation by interested persons.

(a) Any interested person may participate in rulemaking proceedings by submitting comments in writing containing information, views, or arguments.

(b) In his/her discretion, the Administrator may invite any interested person to participate in the rulemaking procedures described in § 601.29.

§ 601.26 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received not later than three (3) days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and it is published in the **Federal Register**.

§ 601.27 Contents of written comments.

All written comments must be in English and submitted in five (5) legible copies, unless the number of copies is specified in the notice. Any interested person must submit as part of his/her written comments all material that he/she considers relevant to any statement of fact made by him/her. Incorporation of material by reference is to be avoided. However, if such incorporation is necessary, the incorporated material shall be identified with respect to document and page.

§ 601.28 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered so far as practicable.

§ 601.29 Additional rulemaking proceedings.

The Administrator may initiate any further rulemaking proceedings that he/she finds necessary or desirable. For example, interested persons may be invited to make oral arguments, to participate in conferences between the Administrator or his/her representative at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Administrator at which a transcript or minutes are kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

§ 601.30 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. Unless otherwise specified, hearings held under this part are informal, non-adversary, fact-finding procedures at which there are no formal pleadings or adverse parties. Any rule issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Administrator designates a representative to conduct any hearing held under this part. The Chief Counsel of the Federal Transit Administration designates a member of his/her staff to serve as legal officer at the hearing.

§ 601.31 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of Chief Counsel. The rule is then submitted to the Administrator for his/her consideration. If the Administrator adopts the rule, it is published in the **Federal Register**, unless all persons subject to it are named and are personally served a copy of it.

§ 601.32 Petitions for rulemaking or exemptions.

(a) Any interested person may petition the Administrator to establish, amend, or repeal a rule, or for a permanent or temporary exemption from FTA rules as allowed by law.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Administrator, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590;

(2) State the name, street and mailing addresses, and telephone number of the petitioner; if the petitioner is not an individual, state the name, street and mailing addresses and telephone number of an individual designated as an agent of the petitioner for all purposes related to the petition;

(3) Set forth the text or substance of the rule or amendment proposed, or of the rule from which the exemption is sought, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(4) Explain the interest of the petitioner in the action requested, including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of the persons to be covered by the exemption;

(5) Contain any information and arguments available to the petitioner to support the action sought; and

(6) In the case of a petition for exemption, except in cases in which good cause is shown, the petition must be submitted at least 120 days before the requested effective date of the exemption.

§ 601.33 Processing of petitions.

(a) Each petition received under § 601.32 of this part is referred to the head of the office responsible for the subject matter of that petition. Unless the Administrator otherwise specifies, no public hearing, argument or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Administrator determines the petition contains adequate justification, he/she initiates rulemaking action under this Subpart C or grants the exemption, as the case may be.

(c) *Denials.* If the Administrator determines the petition does not justify rulemaking or granting the exemption, he/she denies the petition.

(d) *Notification.* Whenever the Administrator determines that a petition should be granted or denied, the office concerned and the Office of Chief Counsel prepare a notice of that grant or denial for issuance to the petitioner, and the Administrator issues it to the petitioner.

§ 601.34 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of a final rule issued under this part. The petition must be in English and submitted in duplicate to the Administrator, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC, 20590, and received not later than thirty (30) days after publication of the final rule in the **Federal Register**. Petitions filed after that time will be considered as petitions filed under § 601.32. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, he/she must state the reason the facts were not presented to the Administrator within the prescribed comment period of the rulemaking.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator otherwise provides, the filing of a petition under this section does not stay the effectiveness of the final rule.

§ 601.35 Proceedings on petitions for reconsideration.

The Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he/she determines to reconsider any rule, he/she may issue a final decision on reconsideration without further proceedings, or he/she may provide such opportunity to submit comment or information and data as he/she deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he/she prepares a notice of the grant or denial of a petition for reconsideration and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

§ 601.36 Procedures for direct final rulemaking.

(a) Rules the Administrator judges to be non-controversial and unlikely to result in adverse public comment may be published as direct final rules. These include non-controversial rules that:

(1) Affect internal procedures of FTA, such as filing requirements and rules governing inspection and copying of documents;

(2) Are non-substantive clarifications or corrections to existing rules;

(3) Update existing forms;

(4) Make minor changes in the substantive rule regarding statistics and reporting requirements;

(5) Make changes to the rule implementing the Privacy Act; and

(6) Adopt technical standards set by outside organizations.

(b) The **Federal Register** document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by FTA within the specified time after the date of publication and that, if no written adverse comment or written notice of intent to submit adverse comment is received, the rule will become effective a specified number of days after the date of publication.

(c) If no written adverse comment or written notice of intent to submit adverse comment is received by FTA within the specified time of publication in the **Federal Register**, FTA will publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If FTA receives any written adverse comment or written notice of intent to submit adverse comment within the specified time of publication in the **Federal Register**, a notice withdrawing the direct final rule will be published in the final rule section of the **Federal Register** and, if FTA decides a rulemaking is warranted, a notice of proposed rulemaking will be published in the proposed rule section of the **Federal Register**.

(e) An ''adverse'' comment for the purpose of this subpart means any comment that FTA determines is critical of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

Issued in Washington, DC, this 1st day of November 2005.

Jennifer L. Dorn,

Administrator.

[FR Doc. 05–22052 Filed 11–3–05; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Friday,
November 4, 2005

Part VI

The President

Executive Order 13389—Creation of the Gulf Coast Recovery and Rebuilding Council

Executive Order 13390—Establishment of a Coordinator of Federal Support for the Recovery and Rebuilding of the Gulf Coast Region

Federal Register
Vol. 70, No. 213
Friday, November 4, 2005

Presidential Documents

Title 3—

The President

Executive Order 13389 of November 1, 2005

Creation of the Gulf Coast Recovery and Rebuilding Council

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5206) (the ''Stafford Act''), and in order to further strengthen Federal support for the recovery and rebuilding of the Gulf Coast region affected by Hurricane Katrina and Hurricane Rita, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to provide effective, integrated, and fiscally responsible support from across the Federal Government to support State, local, and tribal governments, the private sector, and faith-based and other community humanitarian relief organizations in the recovery and rebuilding of the Gulf Coast region affected by Hurricane Katrina and Hurricane Rita.

Sec. 2. *Establishment.* (a) There is established, within the Executive Office of the President, the Gulf Coast Recovery and Rebuilding Council (the ''Council''). The Assistant to the President for Economic Policy shall serve as the Chairman of the Council (the ''Chairman''). The Council shall consist exclusively of the following members or full-time Federal officers or employees designated by them, respectively:

(i) Secretary of the Treasury;

(ii) Secretary of Defense;

(iii) Attorney General;

(iv) Secretary of the Interior;

(v) Secretary of Agriculture;

(vi) Secretary of Commerce;

(vii) Secretary of Labor;

(viii) Secretary of Health and Human Services;

(ix) Secretary of Housing and Urban Development;

(x) Secretary of Transportation;

(xi) Secretary of Energy;

(xii) Secretary of Education;

(xiii) Secretary of Veterans Affairs;

(xiv) Secretary of Homeland Security;

(xv) Administrator of the Environmental Protection Agency;

(xvi) Chairman of the Council of Economic Advisers;

(xvii) Administrator of the Small Business Administration;

(xviii) Director of the Office of Management and Budget;

(xix) Coordinator of Federal Support for the Recovery and Rebuilding of the Gulf Coast Region;

(xx) Assistant to the President for Economic Policy;

(xxi) Assistant to the President for Domestic Policy;

(xxii) Assistant to the President for Homeland Security and Counterterrorism; and

(xxiii) Such other officers and employees of the executive branch as the Chairman may from time to time designate.

(b) The Chairman, in consultation with the Coordinator, shall convene and preside over meetings of the Council, determine its agenda, direct its work, and, as appropriate to particular subject matters, establish and direct subgroups of the Council, which shall consist of Council members or their designees under subsection 2(a) of this order, and including those officers and employees of the executive branch as designated by the Chairman.

Sec. 3. *Functions of Council.* The Council shall:

(a) at the request of the Chairman, the Coordinator of Federal Support for the Recovery and Rebuilding of the Gulf Coast Region, or any agency head who is a member of the Council (subject to the approval of the Chairman), promptly review and provide advice and guidance, for the purpose of furthering the policy set forth in section 1 of this order, regarding any issue relating to the implementation of that policy;

(b) make recommendations to the President, as appropriate, regarding any issue considered by the Council pursuant to section 3(a) of this order; and

(c) give no vote or veto over the activities or advice of the Council to any individual to whom subsection (b) of this section refers.

Sec. 4. *General.* (a) To the extent permitted by law:

(i) agencies shall assist and provide information to the Council for the performance of its functions under this order; and

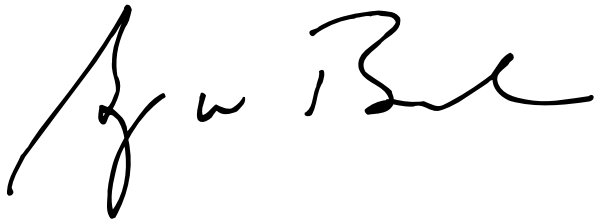
(ii) the Director of the Office of Administration shall provide or arrange for the provision of administrative support to the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(d) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 5. *Termination.* The Council shall terminate 3 years from the date of this order, unless extended by the President.



THE WHITE HOUSE,
November 1, 2005.

[FR Doc. 05–22132
Filed 11–3–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13390 of November 1, 2005

Establishment of a Coordinator of Federal Support for the Recovery and Rebuilding of the Gulf Coast Region

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (6 U.S.C. 101 *et seq.*) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5206) (the ''Stafford Act''), and to further strengthen Federal support for the recovery and rebuilding of the Gulf Coast region affected by Hurricane Katrina and Hurricane Rita, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to provide effective, integrated, and fiscally responsible support from across the Federal Government to support State, local, and tribal governments, the private sector, and faith-based and other community humanitarian relief organizations in the recovery and rebuilding of the Gulf Coast region affected by Hurricane Katrina and Hurricane Rita (the ''Federal Response'').

Sec. 2. *Establishment of Coordinator.* The Secretary of Homeland Security (Secretary) shall establish in the Department of Homeland Security the position of Coordinator of Federal Support for the Recovery and Rebuilding of the Gulf Coast Region (Coordinator). The Coordinator shall be selected by the President and shall be appointed by and report directly to the Secretary. The Secretary shall make available to the Coordinator such personnel, funds, and other resources as may be appropriate to enable the Coordinator to carry out the Coordinator's mission.

Sec. 3. *Mission and Functions of Coordinator.* (a) The Coordinator's mission shall be to work with executive departments and agencies to ensure the proper implementation of the policy set forth in section 1 of this order by coordinating the Federal Response. The Coordinator shall be the principal point of contact for the President and his senior advisors with respect to the Federal Response.

(b) Working with the input of all appropriate heads of executive departments and agencies, the Coordinator shall lead the process to develop the principles governing and define the goals of the Federal Response. The Coordinator shall communicate those principles and goals to all Federal officials involved in the Federal Response.

(c) Working with the input of all appropriate heads of executive departments and agencies, the Coordinator shall lead the development and monitor the implementation of the specific policies and programs that constitute the Federal Response, and ensure that those polices and programs are consistent with the principles and goals of the Federal Response.

(d) The Coordinator shall serve as the primary point of contact within the executive branch with the Congress, State and local governments, the private sector, and community leaders regarding the Federal Response. Working with the input of all appropriate heads of executive departments and agencies, the Coordinator shall be responsible for managing information flow, requests for actions, and discussions regarding the Federal Response with the Congress, State and local governments, the private sector, and community leaders.

Sec. 4. *Duties of Heads of Departments and Agencies.* Heads of executive departments and agencies shall respond promptly to any request by the

Coordinator, and shall, consistent with applicable law, provide such information as the Coordinator deems necessary to carry out the Coordinator's mission, and shall otherwise cooperate with the Coordinator to the greatest extent practicable to facilitate the performance of the Coordinator's mission.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof;

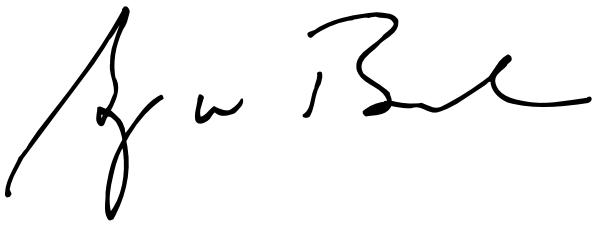
(ii) the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals; or

(iii) the chain of command over the Armed Forces provided in section 162(b) of title 10, United States Code.

(b) This order shall be implemented consistent with applicable law, subject to the availability of appropriations, and shall terminate 3 years from the date of this order.

(c) As used in this order, the term ''agency'' has the meaning set forth for the term ''executive agency'' in section 105 of title 5, United States Code, excluding the Government Accountability Office.

(d) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.



THE WHITE HOUSE,
November 1, 2005.

[FR Doc. 05–22133
Filed 11–3–05; 8:45 am]
Billing code 3195–01–P

Federal Register

Friday,
November 4, 2005

Part VII

The President

Proclamation 7952—National Adoption Month, 2005
Proclamation 7953—National Diabetes Month, 2005
Proclamation 7954—National Hospice Month, 2005
Proclamation 7955—Veterans Day, 2005

Federal Register
Vol. 70, No. 213
Friday, November 4, 2005

Presidential Documents

Title 3—

The President

Proclamation 7952 of November 2, 2005

National Adoption Month, 2005

By the President of the United States of America

A Proclamation

All children deserve strong families with mothers and fathers who are there to protect and love them. Every year, thousands of Americans extend the gift of family to a child through adoption. During National Adoption Month, we recognize the compassion of adoptive and foster families and renew our pledge to finding loving and stable homes for children in need.

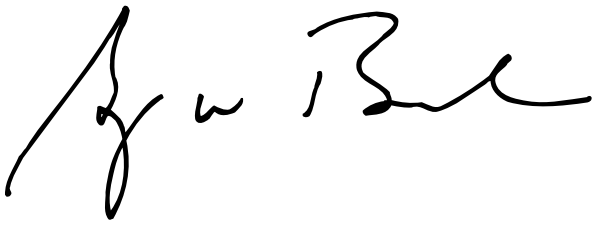
Many of our citizens have revealed the good heart of America by opening their homes to children through adoption. We are grateful to every family who provides a safe, nurturing environment for their adopted children. Last year, an estimated 51,000 children were adopted from our Nation's foster care system, and tens of thousands more were adopted through private agencies and from overseas. Today, more than 118,000 children remain in foster care in the United States awaiting adoption. On November 19, National Adoption Day, thousands of these children will celebrate the finalization of their adoptions and go to their new homes, secure in the love of families they can now call their own.

My Administration remains committed to encouraging adoption. This year, 24 States, the District of Columbia, and the Commonwealth of Puerto Rico were recognized through our Adoption Incentives Program for their efforts to enhance their adoption and child welfare programs. These efforts have contributed to an increase in adoptions from 28,000 per year in 1996 to an estimated 51,000 in 2004. In addition, the AdoptUSKids initiative, which includes public service announcements in English and Spanish and a website, www.AdoptUSKids.org, has helped place more than 5,000 children in permanent homes over the last 3 years.

As we observe National Adoption Month, we recognize the many caring families who have made a difference in a child's life through adoption. By giving these children the love, guidance, and support they need to grow, adoptive and foster families play a vital role in helping the next generation of Americans achieve their dreams.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2005 as National Adoption Month. I call on all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–22201
Filed 11–3–05; 10:58 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7953 of November 2, 2005

National Diabetes Month, 2005

By the President of the United States of America

A Proclamation

Americans of all ages and backgrounds live with diabetes. Nearly 21 million of our citizens have this disease, and researchers estimate that more than 6 million of these individuals have not been diagnosed and are unaware they have it. National Diabetes Month is an opportunity to educate citizens about diabetes and what they can do to help prevent and treat this disease.

Type 1 diabetes, once known as juvenile diabetes, destroys insulin-producing cells and usually strikes children and teenagers. Nearly 95 percent of all diabetics suffer from type 2 diabetes, a condition in which the body fails to produce or to use insulin properly. Type 2 diabetes typically occurs in inactive or obese adults or individuals with a family history of the disease and now increasingly appears in inactive or overweight children. Because of a lack of insulin, diabetics face potential blindness, nontraumatic amputations, kidney disease, and increased risk of heart disease and stroke.

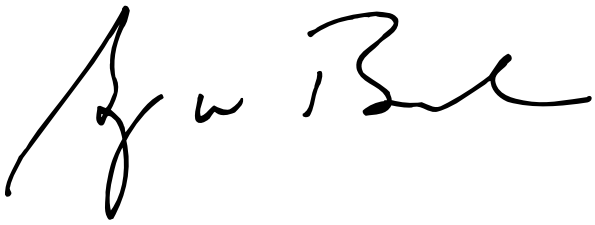
Studies have shown that minor weight loss and daily exercise can help prevent and reduce the effects of diabetes. I encourage all Americans to follow the new dietary guidelines released by the Department of Health and Human Services earlier this year that emphasize the importance of nutritious foods and regular physical activity. In addition to taking steps toward a healthier lifestyle, Americans should consult their doctors for preventive screenings to detect diabetes in its earliest stages. Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, these screenings are now covered for Medicare beneficiaries. These simple tests can save lives and help prevent this potentially life-threatening illness.

My Administration remains committed to fighting diabetes through research and prevention, and we will continue to support the National Institutes of Health (NIH) and others in their efforts to combat this disease. This year, the NIH dedicated more than $1 billion to diabetes research. The Centers for Disease Control and Prevention (CDC) and the NIH are also sponsoring the National Diabetes Education Program, which has helped to inform more than 180 million Americans in the last 3 years about healthy choices and the risk factors of diabetes.

During National Diabetes Month and throughout the year, we pay tribute to the doctors, nurses, scientists, researchers, and all those dedicated to the fight against diabetes. I urge the millions of Americans living with this disease and all citizens to lead healthy lives and to motivate others to do the same. By working together to prevent this disease, we can improve the quality of life for more Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2005 as National Diabetes Month. I call upon all Americans to learn more about the risk factors and symptoms associated with diabetes and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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Billing code 3195–01–P

Presidential Documents

Proclamation 7954 of November 2, 2005

National Hospice Month, 2005

By the President of the United States of America

A Proclamation

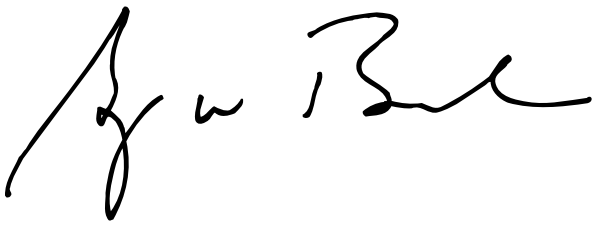
The great strength of America lies in the hearts and souls of our citizens. During National Hospice Month, we recognize hospice caregivers who are building a more compassionate society, where life is valued and those in need can count on the love and support of others. We also recognize the courage and strength of terminally ill patients and their families.

When we help those who hurt and those in pain, we become part of our Nation's armies of compassion. Hospice programs provide an option for individuals with terminal illnesses to be cared for as they choose in their final days, often in their own homes and surrounded by the love of their families. The doctors, nurses, counselors, volunteers, and others who provide hospice care throughout our country bring comfort to those most in need every day, treating terminally ill patients with the dignity and respect they deserve. By dedicating themselves to the care of those approaching the end of life, they demonstrate great love.

The compassion reflected in hospice care is one of the reasons America has the best health care system in the world. Our whole Nation is grateful for the good work of our dedicated medical professionals and hospice caregivers. By taking the time to care for others, they are making America a better place.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2005 as National Hospice Month. I encourage all our citizens to observe this month with appropriate programs and activities. I also ask Americans to recognize our health careprofessionals and volunteers for their contributions to helping those facing terminal illness receive quality care.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–22203

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Presidential Documents

Proclamation 7955 of November 2, 2005

Veterans Day, 2005

By the President of the United States of America

A Proclamation

Americans owe a great debt of gratitude to those who have sacrificed for our liberty and for the security of our Nation. We express deep appreciation to our veterans—the men and women who stepped forward when America needed them, triumphed over brutal enemies, liberated continents, and answered the prayers of millions around the globe.

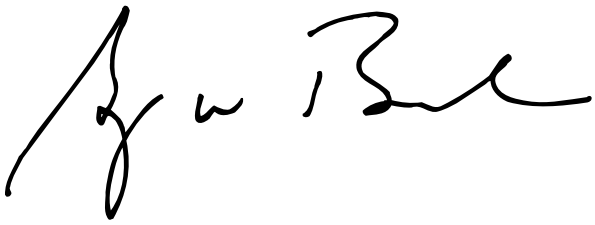
From the beaches of Normandy and the snows of Korea to the mountains of Afghanistan and the deserts of Iraq, our courageous veterans have sacrificed so that Americans and others could live in freedom. As we mark the 60th anniversary of the end of World War II this year, we remember the millions of veterans who crossed oceans and defeated two of the most ruthless military forces the world has ever known. The freedom that the children and grandchildren of these veterans now enjoy is a monument to their fallen comrades and the generations of patriots who have served our country.

Through their commitment to freedom, America's veterans have lifted millions of lives and made our country and the world more secure. They have demonstrated to us that freedom is the mightiest force on Earth. We resolve that their sacrifices will always be remembered by a grateful Nation.

With respect for and in recognition of the contributions our service men and women have made to the cause of peace and freedom around the world, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor veterans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim November 11, 2005, as Veterans Day and urge all Americans to observe November 6 through November 12, 2005, as National Veterans Awareness Week. I urge all Americans to recognize the valor and sacrifice of our veterans through ceremonies and prayers. I call upon Federal, State, and local officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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