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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20729; Directorate Identifier 2002–NM–71–AD; Amendment 39–14370; AD 2005–23–12]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes. That AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This new AD requires revising the ALS of the Instructions for Continued Airworthiness to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures. This new AD results from issuance of a later revision to the airworthiness limitations of the BAe/Avro 146 Aircraft Maintenance Manual, which specifies new inspections and compliance times for inspection and replacement actions. We are issuing this AD to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: This AD becomes effective December 27, 2005.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2000–26–07, amendment 39–12057 (66 FR 263, January 3, 2001). The existing AD applies to all BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes. That NPRM was published in the **Federal Register** on March 30, 2005 (70 FR 16187). That NPRM proposed to require revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures.

Comments

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

Request To Extend the Compliance Time

One commenter states that the 30-day compliance time is not sufficient for the amount of work involved in incorporating the requirements of the NPRM. The commenter states that incorporating the requirements involves a major revision to the inspection program.

We do not agree that the 30-day compliance time is not sufficient. The new requirements of this AD simply involve revising the ALS. The estimated time to revise the ALS is normally 1 hour per airplane. Therefore, we have determined that a 30-day compliance time is adequate for accomplishing the ALS revision. Additionally, the time to implement the structural inspections and life limits specified in the revision of the ALS could vary significantly between operators and we are not able to predict what those variances may be. Continued operational safety necessitates revising the ALS within the 30-day compliance because of the severity of the unsafe condition. Therefore, we have determined that it is unnecessary to revise the final rule in that regard. However, a provision to allow an operator to request an approval for an extension of the compliance time may be submitted in accordance with paragraph (j) of this AD.

Request To Revise the Estimated ''Costs of Compliance''

The same commenter also requests that we revise the estimated ''Costs of Compliance'' in the NPRM. The commenter states that the estimated cost of the NPRM has been greatly understated. The commenter notes that the reasons specified in the previous paragraph to extend the compliance time also contribute to a much higher cost to implement the requirements of the NPRM. In fact, the commenter estimates that it will cost $518,000 to accomplish the requirements of the NPRM for its fleet of 12 airplanes.

We do not agree that the ''Costs of Compliance'' need to be revised. The direct cost of implementing the revision of the ALS that is required by this AD will take about 1 hour per airplane. However, we recognize that this AD may impose certain operational costs, and that maintaining airplanes in an

airworthy condition is vital, but sometimes expensive. ADs require specific actions to address specific unsafe conditions and consequently may appear to impose costs that would not otherwise be borne by operators. However, because operators have a general obligation to maintain their airplanes in an airworthy condition, this appearance is deceptive. Attributing those costs solely to this AD is unrealistic because, in the interest of maintaining safe airplanes, prudent operators would accomplish these actions even if they were not required by the AD. We find it unnecessary to revise the final rule in that regard.

Request To Revise Format for Clarification

The same commenter requests that the NPRM be revised to simplify the fact that the NPRM would supersede the requirements of AD 2000–26–07. The commenter notes that the re-statement of AD 2000–26–07 in paragraph (f) of the NPRM, along with the statement in paragraph (h) of the NPRM that once the new and more restrictive inspections required by paragraph (h) have been incorporated the requirements of paragraph (f) are terminated, is redundant and distracts from the meaning and clear understanding of the NPRM.

We do not agree that such ''simplification'' would clarify the requirements of this AD. Repeating the requirements of the existing AD merely provides for continuing the requirements of AD 2000–26–07 until the new requirements of this AD are complied with. The requirements are not ''redundant'' because, after the effective date of this AD (when AD 2000–26–27 will be superseded), airplanes subject to the airworthiness limitations specified in that AD will continue to be subject to them until the limitations are revised as required by this AD. Further, many operators have requested that we explicitly provide wording to reflect when the requirements of an AD are terminated, and we try to accommodate this clarification when applicable. We find that it is unnecessary to revise the final rule in that regard.

Request To Clearly Identify the New Inspections

The same commenter states that it would be less confusing if the NPRM skipped all the references to the Airplane Maintenance Manual (AMM) sections and revisions and just stated that the structural inspections in the Maintenance Review Board (MRB) report 146–1, section 6, at ''X revision level'' had to be incorporated into the Airworthiness Limitation Section (ALS).

We do not agree that the AD should reference complying with the AD in accordance with the MRB report. Although the data specified in the MRB report may be identical to the AMM, the data specified in the AMM has been approved by the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom. No change is necessary to this AD in that regard. However, if an operator wishes to request an alternative method of compliance (AMOC), a provision has been specified in paragraph (j) of this AD.

Request To Clarify Effectivity

The same commenter states that it is not clear if the NPRM is addressing the structural inspections for airplanes that exceed the limits under the life extension program (LEP). The commenter notes that Section 05–10–01 of the AMM, which was specified in the NPRM as a source of service information, identifies the Supplemental Structural Inspection Document (SSID), Service Bulletin 05–002–20011A as the document that specifies the structural inspections for airplanes on which the LEP applies. However, the commenter states that the inspection requirements for the SSID have not all been identified, and as of April 28, 2005, Service Bulletin 05–002–20011A has not been published.

We acknowledge that a new service bulletin has not been issued yet. However, ANM 05–10–01 clearly specifies that it applies to airframe airworthiness limitations before the life extension program, and that, to provide effective corrosion control, the maintenance is required in accordance with the Corrosion Prevention and Control Program. We find that it is unnecessary to revise the final rule in this regard. However, when additional service information becomes available, we may consider further rulemaking.

Since the Issuance of the Proposed AD

After the issuance of the proposed AD, we received and reviewed a later revision of AMM 05–10–01, dated July 15, 2005. AMM 05–10–01 references AMM 05–20–01 and AMM 05–10–00 as additional sources of service information. AMM 05–10–01 has been approved and mandated by the CAA of the United Kingdom. We have revised the AD to reflect this latest issuance of Chapter 05–10–01.

Editorial Changes

We have revised paragraph (f) of this AD to state that the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness must be revised in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. We have also added that, one acceptable method of revision is by incorporating Section 05–10–01, dated July 15, 2005, of Chapter 5 of the BAe/Avro 146 Aircraft Maintenance Manual (AMM), into the ALS.

We have added a new Note 1 to this action regarding operators requesting Alternative Methods of Compliance (AMOCs) that provides other guidance regarding airplanes that have been previously modified, altered, or repaired in the areas addressed by the inspections of certain structures. Additionally, we have revised paragraph (j) of this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Costs of Compliance

This AD will affect about 59 airplanes of U.S. registry.

The actions that are required by AD 2000–26–07 and retained in this AD take about 1 work hour per airplane, at an average labor rate of $65 per work hour. No parts are required. Based on these figures, the estimated cost of the currently required actions is $65 per airplane.

The new required actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. No parts will be required. Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is $3,835, or $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–12057 (66 FR 263, January 3, 2001) and adding the following new airworthiness directive (AD):

2005–23–12 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14370. Docket No. FAA–2005–20729; Directorate Identifier 2002–NM–71–AD.

Effective Date

(a) This AD becomes effective December 27, 2005.

Affected ADs

(b) This AD supersedes AD 2000–26–07.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by issuance of a later revision to the airworthiness limitations of the BAe/Avro 146 Aircraft Maintenance Manual, which specifies new inspections and compliance times for inspection and replacement actions. We are issuing this AD to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

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.

Requirements of AD 2000–26–07:

Airworthiness Limitations Revision

(f) Within 30 days after February 7, 2001 (the effective date of AD 2000–26–07), revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. One acceptable method of revision is by incorporating Section 05–10–01, Revision 65, dated August 3, 1999, of Chapter 5 of the BAe/Avro 146 Aircraft Maintenance Manual (AMM), into the ALS. That section references other sections of the AMM. The applicable revision level of the referenced sections is that in effect on the effective date of this AD.

(g) Except as specified in paragraph (j) of this AD: After the actions specified in paragraph (f) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the document listed in paragraph (f) of this AD.

New Requirements of This AD

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Later Revision for Airworthiness Limitations

(h) Within 30 days after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent). Section 05–10–01, dated July 15, 2005, of Chapter 5 of the BAe/Avro 146 Aircraft Maintenance Manual is one approved method. This section references other sections of the AMM. The applicable revision level of the referenced sections is that in effect on the effective date of this AD. Incorporating the new and more restrictive life limits and inspections into the ALS terminates the requirements of paragraphs (f) and (g) of this AD, and after incorporation has been done, the limitations required by paragraph (f) of this AD may be removed from the ALS.

(i) Except as specified in paragraph (j) of this AD: After the actions specified in paragraph (h) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the document listed in paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs, approved previously in accordance with AD 2000–26–07, are approved as AMOCs for the corresponding requirements of this AD.

Material Incorporated by Reference

(k) None.

Issued in Renton, Washington, on November 14, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22970 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Modification of Class D and Class E Airspace; Salina Municipal Airport, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: This action corrects an omission in the legal description of Class E2 airspace in a direct final rule, request for comments correction that was published in the **Federal Register** on Thursday, October 13, 2005 (70 FR 59651).

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

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

SUPPLEMENTARY INFORMATION:

History

Federal Register document 2005–21873 published on Friday, July 29, 2005 (70 FR 43742), modified Class D and Class E Airspace at Salina Municipal Airport, KS. A subsequent correction to that document was published on Thursday, October 13, 2005 (70 FR 59651). That correction omitted the complete description of the Class E2 Surface Area. This action corrects that omission.

■ Accordingly, pursuant to the authority delegated to me, the omission in the legal description of airspace at Salina Municipal Airport, KS as published in the **Federal Register** Thursday, October 13, 2005 (70 FR 59651), is corrected as follows:

§ 71.1 [Amended]

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

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACE KS E2 Salina, KS

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

Within a 5.4-mile radius of Salina Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance of a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on November 7, 2005.

Paul J. Sheridan,

Area Director, Western Flight Services Operations.

[FR Doc. 05–23018 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22845; Airspace Docket No. 05–ANM–14]

Revocation of Class E Airspace; Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Class E airspace, Eagle, Colorado published in the **Federal Register** October 13, 2005 (70 FR 59652). The FAA is taking this action due to errors in the effective date, airspace description, and geographic coordinates.

DATES: *Effective Date:* November 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 13, 2005, a final rule was published in the **Federal Register** establishing Class E airspace at Eagle County Regional Airport, Eagle, CO (70 FR 59652), **Federal Register** Docket No. FAA–2005–21078. Subsequent to further review by the charting office, it was found that there were numerous errors in the airspace description. As a result, the FAA has decided to revoke the Class E airspace area.

Class E airspace descriptions are published in paragraph 6002 of FAA Order 7400.9N dated September 1, 2005 and effective September 15, 2005, which is incorporated by reference in 14 CFR part 71.1.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking the Class E airspace area at Eagle County Regional Airport, Eagle, CO. The FAA is taking this action due to errors in the airspace description.

In consideration of the errors in the original rule, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

ANM WA E Eagle, CO [Removed]

* * * * *

Issued in Seattle, Washington, on November 4, 2005.

Raul C. Treviño,

Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–23017 Filed 11–21–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22998; Airspace Docket No. 2005–ASW–19]

Establishment to Class E Airspace; Hillsboro, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes the Class E airspace area at Hillsboro Municipal Airport, Hillsboro, TX (INJ), to provide adequate controlled airspace for the area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP).

DATES: Effective 0901 UTC, February 16, 2006.

Comments for inclusion in the Rules Docket must be received on or before January 16, 2006.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2005–22998/Airspace Docket No. 2005–ASW–20, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. Anyone can find and read the comments received in this docket, including the name, address and any other personal information placed in the docket by a commenter. You may review the public docket containing any comments received and this direct final rule in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated previously.

An informal docket may also be examined during normal business hours at the office of the Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Forth Worth, TX. Call the manager, Airspace Branch, ASW–520, telephone (817) 222–5520; fax (817) 222–5981, to make arrangements for your visit.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone (817) 222–5597.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes a Class D airspace designation for an airspace area from the surface up to but not including, 3,900 feet MSL at Rogers Municipal/Carter Field, Rogers, AR, and will be published in paragraph 5000 of FAA Order 7400.9N, dated September 1, 2004, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1.

This amendment to 14 CFR part 71 also modifies the Class E airspace area extending upward from the surface at Rogers Municipal/Carter Field, Rogers, AR, and will be published in paragraph 6000 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in an adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Authority for This Rulemaking

The FAA 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 I, section 40103, ''Sovereignty and use of airspace.'' Under that section, the FAA is charged with developing plans and policy for the use of the navigable airspace and assigning by regulation or order the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The FAA may modify or revoke an assignment when required in the public interest. This regulation is within the scope of that authority because it is in the public interest to provide greater control of the airspace for the safety of aircraft operating in the vicinity of the newly established airport traffic control tower.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

ASW AR D Rogers, AR [New]

Rogers Municipal/Carter Field, Rogers, AR
Lat. 36°22′20″ N, long. 94°06′25″ W
Razorback VOR
Lat. 36°14′47″ N, long. 94°07′17″ W

That airspace extending upward from the surface up to but not including 3,900 feet MSL within a 4-mile radius of Rogers Municipal/Carter Field and within 2.2 miles each side of the 005° radial of the Razorback VOR extending from the 4-mile radius to 6.0 miles south of the airport excluding that airspace west of a line (lat. 36°24′10″ N., long. 94°10′49″ W and lat. 36°16′24″ N., long. 94°7′55″ W) and excluding the Class C airspace associated with the Northwest Arkansas Regional Airport (XNA). This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6000 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW AR E2 Rogers, AR [Revised]

Rogers Municipal/Carter Field, Rogers, AR
Lat. 36°22′20″ N, long. 94°06′25″ W
Razorback VOR
Lat. 36°14′47″ N, long. 94°07′17″ W

Within a 4-mile radius of Rogers Municipal/Carter Field and within 2.2 miles each side of the 005° radial of the Razorback VOR extending from the 4-mile radius to 6.0 miles south of the airport excluding that airspace west of a line (lat. 36°24′10″ N., long. 94°10′49″ W and lat. 36°16′24″ N., long. 94°7′55″ W) and excluding the Class C airspace associated with the Northwest Arkansas Regional Airport (XNA). This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on November 15, 2005.

William C. Yuknewicz,

Acting Area Director, Central En Route and Oceanic Operations.

[FR Doc. 05–23021 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 11

[Docket No. 2005D–0356]

Guidance for Industry: Questions and Answers Regarding the Final Rule on Establishment and Maintenance of Records (Edition 2); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Questions and Answers Regarding Establishment and Maintenance of Records (Edition 2).'' The guidance responds to various questions raised about section 306 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food. Persons covered by the regulation must be in compliance by December 9, 2005, June 9, 2006, or December 11, 2006, depending on the size of the business.

DATES: Submit written or electronic comments on the agency guidance at any time.

ADDRESSES: You may submit comments, identified by Docket No. 2005D–0356, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments

and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Denise Beavers, Office of Regulations and Policy (HFS–24), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1721.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 9, 2004 (69 FR 71562), FDA issued a final rule to implement section 306 of the Bioterrorism Act. The regulation requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food. Persons subject to the regulation are required to be in compliance by December 9, 2005, June 9, 2006, or December 11, 2006, depending on the size of the business. On September 12, 2005, FDA issued the first edition of a guidance entitled ''Questions and Answers Regarding Establishment and Maintenance of Records.'' This guidance entitled ''Questions and Answers Regarding Establishment and Maintenance of Records (Edition 2)'' responds to questions about the final rule on records. It is intended to help the industry better understand and comply with the regulation in 21 CFR part 1, subpart J. FDA is issuing this guidance as a Level 1 guidance. The guidance represents the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Consistent with FDA's good guidance practices regulation § 10.115(g)(2) (21 CFR 10.115), the agency will accept comments, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, the final rule requires that covered persons begin to establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food by December 9, 2005, June 9, 2006, or December 11, 2006, depending on the size of the business. Clarifying the provisions of the final rule will facilitate prompt compliance with these requirements and complete the rule's implementation.

FDA continues to receive large numbers of questions regarding the records final rule, and is responding to these questions under § 10.115 as promptly as possible, using a question-and-answer format. The agency believes that it is reasonable to maintain all responses to questions concerning establishment and maintenance of records in a single document that is periodically updated as the agency receives and responds to additional questions. The following four indicators will be employed to help users of this guidance identify revisions: (1) The guidance will be identified as a revision of a previously issued document, (2) the revision date of the guidance will appear on its cover, (3) the edition number of the guidance will be included in its title, and (4) questions and answers that have been added to the original guidance will be identified as such in the body of the guidance.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments and the guidance may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/guidance.html*.

Dated: November 15, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23062 Filed 11–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

Department of Defense Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense updates policies and responsibilities for the Defense Privacy Program which implements the Privacy Act of 1974 by showing organizational changes and realignments and by revising referenced statutory and regulatory authority.

DATES: *Effective Date:* November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at (703) 607–2943.

SUPPLEMENTARY INFORMATION: The proposed rule was published September 7, 2005 at 70 FR 53135. No comments were received. The Office of the Secretary is therefore adopting the rule as published.

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

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

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

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

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

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

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

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

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 310

Privacy.

■ Accordingly, 32 CFR part 310, Subpart A—DoD Policy, is amended as follows:

PART 310—DOD PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

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

■ 2. Section 310.1 is revised to read as follows:

§ 310.1 Reissuance.

This part is reissued to consolidate into a single document (32 CFR part 310) Department of Defense (DoD) policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a) by authorizing the development, publication and maintenance of the DoD Privacy Program set forth by DoD Directive 5400.11 [1] and 5400.11–R, both entitled: ''DoD Privacy Program.''

■ 3. Section 310.3 is amended by revising paragraph (a) to read as follows:

§ 310.3 Applicability and scope.

* * * * *

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereinafter referred to collectively as ''the DoD Components''). This part is mandatory for use by all DoD Components. Heads of DoD Components may issue supplementary instructions only when necessary to provide for unique requirements within heir Components. Such instructions will not conflict with the provisions of this part.

* * * * *

■ 4. Section 310.4 amended by revising the definition of ''Individual'' to read as follows:

§ 310.4 Definitions.

* * * * *

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Members of the United States Armed Forces are individuals. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not individuals.

* * * * *

■ 5. Section 310.5 is amended as follows:

■ a. Removing the introductory text;

■ b. Revising paragraphs (a) and (g);

■ c. Adding paragraph (j) to read as follows:

§ 310.5 Policy.

a. The privacy of an individual is a personal and fundamental right that shall be respected and protected.

* * * * *

(g) Disclosure of records pertaining to personnel of the National Security Agency, the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency shall be prohibited to the extent authorized by Public Law 86–36 (1959) and 10 U.S.C. 424. Disclosure of records pertaining to personnel of overseas, sensitive, or routinely deployable units shall be prohibited to the extent authorized by 10 U.S.C. 130b. Disclosure of medical records is prohibited except as authorized by DoD 6025.18–R. [2]

* * * * *

(j) DoD Field Activities shall receive Privacy Program support from the Director, Washington Headquarters Services.

■ 6. Section 310.6 is amended by revising paragraphs (a)(4), (b), (c) introductory text, (c)(3), (d) introductory text and (d)(5); and adding paragraph (a)(5) to read as follows:

§ 310.6 Responsibilities.

(a) * * *

(4) Serve as the Chair to the Defense Privacy Board and Defense Data Integrity Board (§ 310.9).

(5) Supervise and oversee the activities of the Defense Privacy Office (§ 310.9).

(b) The Director, Washington Headquarters Services, under the DA&M, OSD, shall provide Privacy Program support for DoD Field Activities.

(c) The General Counsel of the Department of Defense (GC, DoD) shall:

* * * * *

(3) Serve as a member of the Defense Privacy Board, the Defense Data Integrity Board, the Defense Privacy Board Legal Committee (§ 310.9).

(d) The Secretaries of the Military Departments and the Heads of the Other DoD Components, except as noted in Sec. 310.5(j), shall:

* * * * *

(5) Submit reports, consistent with the requirements of DoD 5400.11–R, as mandated by 5 U.S.C. 552a and OMB Circular A–130, and as otherwise directed by the Defense Privacy Office.

* * * * *

■ 7. Section 310.9 is amended as follows:

■ a. Revise paragraphs (a)(1), (b)(1), (c)(1);

■ b. Redesignate the second paragraph (c) as a new paragraph (d);

■ c. Revise newly redesignated (d)(2)(vi) and (d)(2)(x) to read as follows:

§ 310.9 Privacy boards and office composition and responsibilities.

(a) * * *

(1) *Membership.* The Board shall consist of the DA&M, OSD, who shall serve as the Chair; the Director of the Defense Privacy Office, DA&M, who shall serve as the Executive Secretary and as a member; The representatives designated by the Secretaries of the Military Departments; and the following officials or their designees: The Deputy Under Secretary of Defense for Program

[1] Copies of DoD issuances may be obtained at *http://www.dtic.mil/whs/directives/.*

[2] See footnote 1 to § 310.1.

Integration (DUSD (PI)); the Assistant Secretary of Defense for Health Affairs; the Assistant Secretary of Defense for Networks and Information Integration (ASD(NII))/Chief Information Officer (CIO); the Director, Executive Services and Communications Directorate, Washington Headquarters Services (WHS); the GC, DoD; and the Director for Information Technology Management Directorate (ITMD), WHS. The designees also may be the principal point of contact for the DoD Component for privacy matters.

* * * * *

(b) * * *

(1) *Membership.* The Board shall consist of the DA&M, OSD, who shall serve as the Chair; the Director of the Defense Privacy Office, DA&M, who shall serve as the Executive Secretary; and the following officials or their designees: The representatives designated by the Secretaries of the Military Departments; the DUSD (PI); the ASD (NII)/CIO; the GC, DoD; the Inspector General, DoD; the ITMD, WHS; and the Director, Defense Manpower Data Center. The designees also may be the principal points of contact for the DoD Component for privacy matters.

* * * * *

(c) * * *

(1) The Committee shall consist of the Director, Defense Privacy Office, DA&M, who shall serve as the Chair and the Executive Secretary; the GC, DoD, or designee; and civilian and/or military counsel from each of the DoD Components. The General Counsels (GCs) and The Judge Advocates General of the Military Departments shall determine who shall provide representation for their respective Department to the Committee. This does not preclude representation from each office. The GCs of the other DoD Components shall provide legal representation to the Committee. Other DoD civilian or military counsel may be appointed by the Executive Secretary, after coordination with the DoD Component concerned, to serve on the Committee on those occasions when specialized knowledge or expertise shall be required.

* * * * *

(d) *The Defense Privacy Office.*

* * * * *

(2) * * *

(vi) Review proposed DoD Component privacy rulemaking, to include submission of the rule to the Office of the **Federal Register** for publication and providing OMB and the Congress reports, consistent with 5 U.S.C. 552a, OMB Circular A–130, and DoD 5400.11–R.

* * * * *

(x) Compile and submit the ''Biennial Matching Activity Report'' to the OMB as required by OMB Circular A–130 and DoD 5400.11–R, and such other reports as required.

* * * * *

Dated: November 16, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–23070 Filed 11–21–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–129]

RIN 1625–AA–09

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Berkley Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River in Norfolk, Virginia. To facilitate electrical and mechanical repairs, this deviation allows the drawbridge to remain closed-to-navigation each day, from 7 a.m. to 7 p.m., on four two-day closure periods: November 29 & 30, 2005; December 28 & 29, 2005; January 24 & 25, 2006; and February 21 & 22, 2006.

DATES: This deviation is effective from 7 a.m. on November 29, 2005, to 7 p.m. on February 22, 2006.

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

SUPPLEMENTARY INFORMATION: The Berkley Bridge, a lift-type drawbridge, has a vertical clearance in the closed position to vessels of 48 feet, at mean high water.

The bridge owner, the Virginia Department of Transportation, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.1007, to effect electrical and mechanical repairs of the draw span.

To facilitate the repairs, the drawbridge will be closed to navigation each day, from 7 a.m. to 7 p.m., on four two-day closure periods: November 29 & 30, 2005; December 28 & 29, 2005; January 24 & 25, 2006; and February 21 & 22, 2006. During these periods, the repairs require immobilizing the operation of the lift span in the closed-to-navigation position. At all other times, the drawbridge will operate in accordance with the current operating regulations outlined in 33 CFR 117.1007.

The Coast Guard has informed the known users of the waterway so that they can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: November 10, 2005.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 05–23029 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 05–153]

RIN 1625–AA87

Security Zone; Sea Buoy at the Entrance of St. Mary's River to Kings Bay, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone around foreign naval submarines in transit within the area between 12 nautical miles offshore from the baseline, also known as the shoreline, at the mouth of the St. Mary's River to the Kings Bay Naval Submarine Base, Kings Bay, GA. The security zone includes all waters within 500 yards in any direction of the submarine. The rule prohibits entry into the security zone without the permission of the Captain of the Port (COTP) Jacksonville or his designated representative. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed, must comply with

all orders issued by the COTP or his designated representative, and must not proceed any closer than 100 yards, in any direction, to the submarine. This security zone is needed to ensure public safety and to prevent sabotage or terrorist acts against the submarine.

DATES: This rule is effective from 8 a.m. on November 10, 2005, until 12 midnight on December 1, 2005.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket [COTP Jacksonville 05–153] and are available for inspection and copying at Coast Guard Sector Jacksonville Prevention Department, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Kira Peterson at Coast Guard Sector Jacksonville Prevention Department, Florida tel: (904) 232–2640, ext. 108.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delay the rule's effective date, is contrary to the public interest because immediate action is necessary to protect the public and waters of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and will place Coast Guard vessels in the vicinity of this zone to advise mariners of the restrictions.

Background and Purpose

This rule is needed to protect foreign navy submarines from damage or injury from sabotage or other subversive acts, accidents or other causes of a similar nature, and to secure the observance of rights and obligations of the United States. Although this rule is effective from 8 a.m. on November 10, 2005, until 12 midnight on December 1, 2005, the Coast Guard will only enforce this rule when a foreign navy submarine is transiting within the area between 12 nautical miles offshore from the baseline, also known as the shoreline, at the mouth of the St. Mary's River to the Kings Bay Naval Submarine Base, Kings Bay, GA. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, Florida or his designated representative. The temporary security zone encompasses all waters within 500 yards around the foreign naval submarine. Vessels or persons authorized to enter the zone must proceed at a minimum safe speed, must comply with all orders issued by the COTP or his designated representative, and must not proceed any closer than 100 yards, in any direction, to the submarine.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under the order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time and the impact on routine navigation is expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulation will only be enforced for a short period of time within an 11-day window, during vessel transits, and the impact on routine navigation is expected to be minimal. Vessels may still transit safely around the zone and, upon permission of the Captain of the Port or his designated representative, may transit at minimum safe speed through that portion of the security zone between 100 and 500 yards from the submarine.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive

Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T07–153 is added to read as follows:

§ 165.T07–153 Security Zone; Sea buoy at the entrance of St. Mary's River to Kings Bay, GA.

(a) *Regulated area.* The Coast Guard is establishing a temporary moving security zone around foreign naval submarines when they are within a regulated area 12 nautical miles offshore from the baseline, also known as the shoreline, at the mouth of the St. Mary's River to the Kings Bay Naval Submarine Base, Kings Bay, GA. The temporary security zone encompasses all waters within 500 yards in any direction around a foreign navy submarine transiting within the regulated area.

(b) *Definitions.* The following definitions apply to this section:

Designated representatives means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Jacksonville, Florida, in the enforcement of the regulated navigation areas and security zones.

Minimum safe speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, anchoring, mooring or transiting in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, FL or his designated representative. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed, must comply with all orders issued by the COTP or his designated representative, and must not proceed any closer than 100 yards, in any direction, to the submarine.

(d) *Dates.* This section is effective from 8 a.m. on November 10, 2005, until 12 midnight on December 1, 2005.

Dated: November 10, 2005.

David L. Lersch,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 05–23097 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD11–05–002]

RIN 1625–AA11

Regulated Navigation Area; San Diego Bay, Mission Bay and Their Approaches, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) within San Diego Bay, Mission Bay, and their approaches out to the 12

nautical mile limit of the territorial sea. This action is necessary to provide the COTP a greater situational awareness of vessels intending to enter San Diego Bay or Mission Bay, to allow the COTP to enforce safety and security zones associated with naval vessel movements and exercises, and increase awareness of potential threats to national security assets within the area. This RNA will ensure the safe movement of vessels in the vicinity of San Diego Bay and Mission Bay.

DATES: This rule is effective December 22, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD11 05–002 and are available for inspection or copying at USCG Sector San Diego between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Andrew Cheney, Chief, Ports and Waterways Division, USCG Sector San Diego, telephone number 619–278–7261.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 15, 2005, we published a Notice of Proposed Rulemaking (NPRM) entitled, Regulated Navigation Area; San Diego Bay, Mission Bay and Their Approaches, California in the **Federal Register** (70 FR 40944). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

This rule is one of a number of measures to reduce potential terrorist threats to the Port of San Diego, California. San Diego is the homeport of numerous U.S. naval vessels and facilities. The RNA increases the safety and security of naval vessels and facilities, commercial vessels, and the public by improving enforcement of safety and security zones by providing greater situational awareness regarding vessel operations in the area.

In this rulemaking, the Coast Guard introduces a series of procedures to organize the flow and operation of vessels legitimately seeking to enter, leave or navigate within San Diego Bay or Mission Bay. These procedures apply to vessels of 100 GT or more, including tug and barge combinations of 100 GT or more (combined) intending to enter, leave or navigate within San Diego Bay or Mission Bay. These regulations do not apply to vessels engaged in innocent passage, force majeure or any other entry allowed under principles of international law regardless of their presence in the RNA. Vessels operating Automatic Identification System (AIS) in accordance with the AIS carriage requirements of the Maritime Transportation Security Act of 2002 (MTSA) and the International Maritime Organization requirements adopted under International Convention for the Safety of Life at Sea, 1974, (SOLAS) as amended, are also exempt from this regulation. The procedures are as follows:

Vessels intending to cross the COLREGS Demarcation Line (denoted in 33 CFR 80.1104 or 80.1106) and enter San Diego Bay or Mission Bay as part of normal operations must obtain permission from the COTP or designated representative upon entering into the RNA established in 33 CFR 165.1122. Further, vessels of 100 GT or more that have already crossed the COLREGS Demarcation Line and entered San Diego or Mission Bay and intend to depart or move within the RNA must request permission from the COTP or designated representative. The Coast Guard recommends seeking permission 30 minutes prior to anticipated entry into the RNA or commencement of movement within the RNA to avoid delays.

Upon receiving permission from the COTP or designated representative, the vessel may enter, depart, or move within the RNA and proceed in accordance with directives provided by the COTP or designated representative.

Communication with the COTP may be made by telephone at (619) 278–7033 (select option 2) or via VHF–FM marine band radio on channel 16 (156.800 Mhz). Coast Guard Information regarding Port Security requirements in San Diego and Mission Bay will be conveyed via marine information broadcast on VHF–FM marine band radio, channel 22A (157.1 MHz).

Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rule and has not changed the regulations from those proposed in the published NPRM.

Regulatory Evaluation

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

This conclusion is based on the fact that this rule applies only to vessels of 100 GT or more, as described above, which are not using AIS and that intend on entering, departing, or moving within San Diego Bay or Mission Bay. This rule is not intended to infringe on internationally recognized principles such as innocent passage and force majeure. Further, because this rule is designed to manage the flow of qualified vessels, we do not anticipate significant delays in the movement of vessels through San Diego or Mission Bay.

Small Entities

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

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

This rule will affect only the following entities, some of which may be small entities: owners and operators of commercial vessels of 100 GT or more intending to enter, depart, or move in San Diego Bay or Mission Bay. Because the number of small entities owning/operating commercial vessels of this size is not substantial and there is little anticipation of delay when requesting entry into San Diego Bay or Mission Bay the economic impact of this rule should be minimal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization, or governmental jurisdiction is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LCDR Andrew Cheney, Chief, Ports and Waterways Division, USCG Sector San Diego, 619–278–7261.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a Regulated Navigation Area.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1122 to read as follows:

§ 165.1122 San Diego Bay, Mission Bay and their Approaches—Regulated navigation area.

(a) *Regulated navigation area.* The following area is a regulated navigation area (RNA): All waters of San Diego Bay, Mission Bay, and their approaches encompassed by a line commencing at Point La Jolla (32°51′06″ N, 117°16′42″ W); thence proceeding seaward on a line bearing 255° T to the outermost extent of the territorial seas; thence proceeding southerly along the outermost extent of the territorial seas to the intersection of the maritime boundary with Mexico; thence proceeding easterly, along the maritime boundary with Mexico to its intersection with the California coast; thence proceeding northerly, along the shoreline of the California coast—and including the inland waters of San Diego Bay and Mission Bay, California, shoreward of the COLREGS Demarcation Line —back to the point of origin. All coordinates reference 1983 North American Datum (NAD 83).

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

COLREGS Demarcation Line means the line described at 33 CFR 80.1104 or 80.1106.

Public vessel means a vessel that is owned or demise—(bareboat) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.

Vessel means every description of watercraft or other artificial contrivance

used, or capable of being used, as a means of transportation on water other than a public vessel.

(c) *Applicability*. This section applies to all vessels of 100 gross tons (GT) or more, including tug and barge combinations of 100 GT or more (combined), operating within the RNA, with the exception of public vessels, vessels not intending to cross the COLREGS Demarcation Line and enter San Diego Bay or Mission Bay, and any vessels exercising rights under principles of international law, including innocent passage or force majeure, within the area of this RNA. Vessels operating properly installed, operational, type approved automatic identification system (AIS) as denoted in 33 CFR 164.46 are exempted from making requests as required in this regulation.

(d) *Regulations*. (1) No vessel to which this rule applies may enter, depart or move within San Diego Bay or Mission Bay unless it complies with the following requirements:

(i) Obtain permission to enter San Diego Bay or Mission Bay from the Captain of the Port or designated representative immediately upon entering the RNA. However, to avoid potential delays, we recommend seeking permission 30 minutes prior to entering the RNA.

(ii) Follow all instructions issued by the Captain of the Port or designated representative.

(iii) Obtain permission for any departure from or movement within the RNA from the Captain of the Port or designated representative prior to getting underway.

(iv) Follow all instructions issued by the Captain of the Port or designated representative.

(v) Requests may be made by telephone at 619–278–7033 (select option 2) or via VHF–FM radiotelephone on channel 16 (156.800 Mhz). The call sign for radiotelephone requests to the Captain of the Port or designated representative is ''Coast Guard Sector San Diego.''

(2) For purposes of the requirements in paragraph (d)(1) of this section, the Captain of the Port or designated representative means any official designated by the Captain of the Port, including but not limited to commissioned, warrant, and petty officers of the U.S. Coast Guard, and any U.S. Coast Guard patrol vessel. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(e) *Waivers.* The Captain of the Port or designated representative may, upon request, waive any regulation in this section.

Dated: November 9, 2005.

K.J. Eldridge,

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

[FR Doc. 05–23030 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251, 261, and 291

RIN 0596–AC35

Recreation Fees

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule is making minor, purely technical changes to implement the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814). The Federal Lands Recreation Enhancement Act repealed and supplanted section 4 of the Land and Water Conservation Fund Act (16 U.S.C. 460*l*–6a) as the authority for special recreation permits issued by federal land management agencies and for recreation fees charged by federal land management agencies, including the Forest Service. Consequently, in 36 CFR part 251, subpart B, the final rule is replacing the citation to section 4(c) of the Land and Water Conservation Fund Act for special recreation permits (16 U.S.C. 460*l*–6a(c)) with a citation to section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)). The final rule also is adding a definition for recreation fee and revising the prohibition for failure to pay recreation fees in 36 CFR part 261, subpart A, to conform with the Federal Lands Recreation Enhancement Act. In addition, the final rule is removing 36 CFR part 291 governing recreation fees authorized under section 4 of the Land and Water Conservation Fund Act. Because these changes are minor, purely technical, and nondiscretionary, the Department finds that good cause exists to exempt this rulemaking from public notice and comment under 5 U.S.C. 553(b)(B).

DATES: This rule is effective November 22, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer Eberlien, Program Leader, Recreation and Heritage Resources Staff, (202) 205–1169.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (REA) (16 U.S.C. 6801–6814) was enacted December 8, 2004. REA provides the sole authority for the Forest Service to issue and collect fees for special recreation permits for use and occupancy of National Forest System lands and to establish, modify, charge, and collect recreation fees on National Forest System lands. Section 813 of REA (16 U.S.C. 6812) repeals the agency's other authorities for issuing these permits and charging these fees, including section 4 of the Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. 460*l*–6a).

Forest Service regulations at 36 CFR part 251, subpart B, govern special use authorizations for use and occupancy of National Forest System lands. In the list of authorities for part 251, subpart B, the final rule is replacing the citation to section 4(c) of the LWCFA (16 U.S.C. 460*l*–6a(c)) with a citation to section 803(h) of REA (16 U.S.C. 6802(h)) for special recreation permits. In addition, in § 251.53(k), which enumerates the authority for special recreation permits, the final rule is replacing the citation to section 4(c) of the LWCFA with a citation to section 803(h) of REA.

The regulations at 36 CFR part 261, subpart A, establish prohibitions relating to acts or omissions relating to National Forest System lands. The final rule is adding a definition for recreation fee in § 261.2 to track the definition for that term in section 802(8) of REA (16 U.S.C. 6801(8)) to the extent it applies to the Forest Service and revising the prohibition for failure to pay recreation fees in § 261.15 to conform precisely to the enforcement provisions in section 812(d) of REA (16 U.S.C. 6811(d)).

The Department also is removing 36 CFR part 291 governing recreation fees authorized by section 4 of the LWCFA. The Department is not replacing part 291, because the Department believes that REA is sufficiently prescriptive that it does not require interpretation in a regulation. The Forest Service intends to issue directives that provide specific direction on implementation of REA.

Good Cause Statement

The Administrative Procedure Act (APA) exempts certain rulemaking from its public notice and comment requirements, including rulemaking involving ''public property'' (5 U.S.C. 553(a)(2)), such as Federal lands managed by the Forest Service. Furthermore, the APA allows agencies to promulgate rules without public notice and comment when an agency for good cause finds that public notice and comment are ''impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(B)).

In 1971, Secretary of Agriculture Hardin announced a voluntary waiver of the public property exemption from public notice and comment rulemaking under the APA (July 24, 1971; 36 FR 13804). Thus, agencies in the United States Department of Agriculture (USDA) generally provide public notice and comment in promulgating rules. However, the Hardin policy permits USDA agencies to promulgate final rules without public notice and comment when the agencies find for good cause that notice and comment procedures would be impracticable, unnecessary, or contrary to the public interest, consistent with 5 U.S.C. 553(b)(B). The courts have recognized this good cause exception to the Hardin policy and have indicated that since the public notice and comment requirement was adopted voluntarily, the Secretary should be afforded ''more latitude'' in making a good cause determination. See *Alcaraz* v. *Block,* 746 F.2d 593, 612 (9th Cir. 1984).

The Department finds that good cause exists to exempt this rulemaking from public notice and comment pursuant to 5 U.S.C. 553(b)(B). This rulemaking merely updates citations, revises a prohibition to conform precisely to a newly enacted statute, and removes obsolete provisions. These minor and purely technical changes are dictated by enactment of REA. Since the Department has no discretion in implementing these changes, public notice and comment are unnecessary pursuant to 5 U.S.C. 553(b)(B).

Regulatory Certifications

Environmental Impact

This final rule makes purely minor, technical changes to the Forest Service's regulations. Section 31.1b of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Department's conclusion is that this final rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This final rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this final rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Regulatory Flexibility Act

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The final rule makes purely minor, technical changes to the Forest Service's regulations. This final rule will not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the final rule will not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this final rule under the requirements of Executive Order 13132 on federalism, and has determined that the final rule conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have Tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Text of the Final Rule

List of Subjects

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands rights-of-way, Reporting and recordkeeping requirement, Water resources.

36 CFR Part 261

Law enforcement, National forests.

36 CFR Part 291

Recreation and recreation areas.

■ Therefore, for the reasons set out in the preamble, amend the authority citation for part 251, amend subpart A of part 261, and remove part 291of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

■ 1. Revise the authority citation for part 251 to read as follows:

Authority: 7 U.S.C. 1011(f), 16 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210, 6802(h); 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

Subpart B—Special Uses

■ 2. Amend § 251.53 to revise paragraph (k) to read as follows:

§ 251.53 Authorities.

* * * * *

(k) Special recreation permits issued under section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)), for specialized recreation uses of National Forest System lands, such as group activities, recreation events, and motorized recreational vehicle use.

* * * * *

PART 261—PROHIBITIONS

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460*l*–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

Subpart A—General Prohibitions

■ 4. Amend § 261.2 to add in alphabetical order a definition for ''recreation fee'' to read as follows:

§ 261.2 Definitions

* * * * *

Recreation fee means a standard amenity recreation fee, an expanded amenity recreation fee, or a special recreation permit fee as defined in section 802(8) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801(8)).

* * * * *

■ 5. Revise § 261.15 to read as follows:

§ 261.15 Recreation fees

Failure to pay any recreation fee is prohibited. Notwithstanding 18 U.S.C. 3571(e), the fine imposed for the first offense of nonpayment shall not exceed $100.

PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

PART 291—[REMOVED]

■ 6. Remove the entire part 291.

Dated: November 7, 2005.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 05–23111 Filed 11–21–05; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2005–0153; FRL–7996–9]

RIN 2060–AJ71

Control of Air Pollution From New Motor Vehicles; Revisions to Motor Vehicle Diesel Fuel Sulfur Transition Provisions; and Technical Amendments to the Highway Diesel, Nonroad Diesel, and Tier 2 Gasoline Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The highway diesel fuel sulfur program, finalized in 2001, is resulting in the nationwide transition in 2006 of most diesel fuel from low-sulfur diesel (LSD) to ultra-low sulfur diesel (ULSD). Some in the diesel fuel production and distribution industries indicated that they may be unable to complete the transition to ULSD by the current deadlines at the very furthest reaches of the distribution system. In response, today's action makes limited changes to the transition provisions for entities in the highway diesel distribution system. These changes finely balance the concerns of the fuel industry and the critical need for ULSD to be available for 2007 diesel vehicles and engines. The impacts of the recent hurricanes along the Gulf Coast of the U.S. are not a contributing factor in taking today's action, and there is no change in the June 1, 2006 start date for refiners to be producing ULSD (15 ppm sulfur).

In today's action, we extend the ULSD implementation dates for terminals and retail outlets by 45 days. Thus, terminals will have until September 1, 2006 (vs. July 15) and retailers will have until October 15, 2006 (vs. September 1) to complete their transitions to ULSD. We also provide that downstream of the refinery fuel with a sulfur content slightly higher than 15 ppm may temporarily be sold as ULSD. In addition, we extend the beginning of the restriction on how much ULSD can be downgraded to higher sulfur fuel by 15 days, to October 15, 2006 to be consistent with the end of the new transition dates. The rule also includes corrections to the recordkeeping and reporting requirements under the highway diesel program and also includes several minor amendments to the highway diesel sulfur, nonroad diesel sulfur, and gasoline sulfur programs to correct errors or omissions in the regulations.

DATES: This direct final rule is effective on January 6, 2006 without further notice, unless we receive adverse comments by December 22, 2005 or receive a request for a public hearing by December 7, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2005–0153. 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.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air 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: Tad Wysor, Assessment and Standards Division, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214–4332, fax (734) 214–4816, e-mail *wysor.tad@epa.gov*.

SUPPLEMENTARY INFORMATION: We do not expect to hold a public hearing, however, if we receive such request we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments. If we receive adverse comment or a request for a hearing, we will withdraw the amendment, paragraph or section of the direct final rule receiving such comment or hearing request, and such withdrawn amendment, paragraph or section will

not take effect. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment or request for hearing will become effective on the date set out in the ''DATES'' section of today's preamble.

Does This Action Apply to Me?

This action will affect you if you produce or distribute motor vehicle diesel fuel or gasoline. The table below gives an example of entities that may have to comply with the regulations. However, since this is only an example, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated industries
Industry	324110	2911	Petroleum refiners.
Industry	422710 422720	5171 5172	Diesel and gasoline fuel marketers and distributors.
Industry	484220 484230	4212 4213	Diesel and gasoline fuel carriers.

Notes:
[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

How Can I Obtain Copies of This Document and Other Related Information?

Docket: EPA has established an official public docket for this action under Docket ID No. OAR–2500–0153 at *http://www.epa.gov/edocket*. 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 Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air Docket is (202) 566–1742.

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 above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

I. Amendments to the Highway ULSD Transition Provisions

In 2001, EPA published the final rule for the Heavy-Duty Engine and Diesel Fuel program. 66 FR 5002 (January 18, 2001). This rule, developed through extensive interaction with the diesel engine industry, refiners producing diesel fuel, diesel fuel distributors, states, and non-governmental organizations, will result in very large reductions in emissions from on-road trucks and buses. The health benefits of the program will far exceed the economic costs. All major stakeholders are supportive of the overall program.

Key to the success of the program will be the near-total removal of sulfur from all diesel fuel used in highway diesel engines. Ultra-Low Sulfur Diesel (ULSD) fuel is a critical complement to the stringent new emission standards coming into effect for these engines during the same time period. These engine emission standards will require diesel engine manufacturers to introduce new emission control systems which will rely on the exclusive use of ULSD to maintain operability and effectiveness.

The highway diesel fuel sulfur program will result in the nationwide production and distribution of ULSD fuel, diesel fuel that is subject to a sulfur level of 15 parts per million (ppm) or less. This fuel will replace current Low Sulfur Diesel (LSD) fuel used in highway vehicles, which is subject to a 500 ppm sulfur standard. Together, the stringent engine emission standards and the stringent diesel fuel sulfur standards combine to represent a major step toward reducing the major public health concerns associated with emissions from on-highway diesel trucks and buses.[1]

The nationwide system that produces and distributes diesel fuel is complex and efficient, and these characteristics are reflected in the diesel sulfur program. The major segments of the industry are the producers (refiners and importers); companies operating fuel pipelines and other means of transporting fuel, and distribution terminals; fuel wholesalers and tank truck operators; and retailers and ''wholesale purchaser-consumers'' (WPCs). All segments of the system are involved in the transition from current diesel fuel to the widespread availability of ULSD fuel, and each of the entities involved is affected by provisions of the rule.

- Refining companies have been upgrading their refineries in order to remove most of the sulfur from diesel fuel and be ready to introduce ULSD highway fuel into the distribution system no later than June 1, 2006.
- Pipeline and terminal operators are in the process of adding, upgrading, or making operational changes for equipment that handles diesel fuel, including piping, valves, and storage tanks. As ULSD begins to flow through the downstream distribution system, pipelines and terminals will either completely transition from LSD to ULSD, use separate capability to distribute ULSD to their downstream customers, or carefully manage sequential shipments of these products.

[1] The highway diesel sulfur program will be followed by the nonroad diesel sulfur program, issued in 2004. 69 FR 38958 (June 29, 2004). The nonroad program will require LSD to be produced for use in nonroad diesel engines beginning in 2007. ULSD will be produced for use in nonroad diesel engines beginning in 2000, during the same time period when new stringent emissions standards will go into effect for new nonroad engines.

• Retail and WPC facilities represent the final segment of the distribution system. These entities will also need to turn over their higher sulfur diesel fuel supplies and make operational adjustments to be able to supply ULSD to the ultimate consumers.

The next sections of this preamble describe the technical and logistical issues facing the diesel fuel industry during the 2006 transition to ULSD highway fuel, including some concerns raised recently as we near the beginning of the implementation of the program. In today's action, we implement limited revisions to the transition provisions of the highway diesel sulfur rule. These changes are designed to address transition issues concerning various segments of the diesel fuel industry and help facilitate the successful nationwide transition to ULSD fuel.

Although the recent hurricanes along the Gulf Coast of the U.S. caused serious damage to a number of refineries, and the aftermath of the storms has continued to affect the petroleum industry, these events are not a contributing factor in taking today's action. Based on the confidential information provided to us, as well as conversations with the affected refiners, the impacts of the hurricanes on the refineries appear to be temporary, and we do not expect to see any general impediments to the successful widespread production of ULSD by June 1, 2006. To the extent that individual refineries may have experienced temporary delays that might impact their ULSD start-up schedules (due to direct impacts of the hurricanes or indirect impacts on their contractors and suppliers), there are provisions in the existing highway diesel program that allow EPA to consider cases of ''extreme, unusual, and unforeseen circumstances'' (40 CFR 80.561). We will address these cases under these provisions on a refinery-by-refinery basis.

As described below, this rule focuses on providing a limited amount of additional time for entities in the diesel fuel distribution system to flush higher sulfur fuel out of the system during the transition to ULSD. This rule does not affect the start date by which refiners need to be producing ULSD under the highway diesel program—June 1, 2006. In fact, although EPA has taken several actions in response to the hurricanes, none of these actions affects the start date of the program.

A. The Existing ULSD Transition Provisions

In developing the highway diesel sulfur program, EPA recognized several practical considerations inherent in successfully changing over most of the nation's highway diesel fuel from LSD to ULSD before the introduction of new highway diesel engines designed to operate exclusively on ULSD fuel. The overall program, finalized in early 2001, provided long lead times for the diesel fuel refining and distribution industries to prepare for compliance in 2006. Incorporated in the program was a set of provisions carefully designed, with extensive input from industry and others, to ensure the smooth nationwide completion of the transition to ULSD.

After the formal beginning of the program on June 1, 2006 and during the next few years, the opportunity for refiners and importers to produce and market 500 ppm highway diesel fuel will be significantly limited. As of June 1, 2006, at least 80 percent of the highway diesel fuel that refiners produce or importers introduce must meet the 15 ppm sulfur standard. The remaining 20 percent can continue to be produced to a 500 ppm sulfur standard.[2] The 2005 refiner pre-compliance report data provided by refiners indicate that about 90 percent of the highway diesel fuel produced or imported will meet the 15 ppm sulfur standard beginning June 1, 2006, well above the 80 percent requirement. Thus, the vast majority of all highway diesel fuel produced by refiners or introduced by importers will have reached ULSD levels by that date. Even before the June 1, 2006 refinery gate deadline for the ULSD requirement, we expect that several refiners will have begun introducing some volumes of ULSD into the distribution system. Starting June 1, 2006, if fuel is designated and marketed as ULSD, it must meet the ULSD standards.

As very low sulfur diesel fuel begins to enter the distribution system, pipelines and terminals, and in some cases retailers and WPCs, will start to turn over their existing supplies of LSD fuel to ULSD. The transition will accelerate after June 1, 2006 as large volumes of ULSD enter the system. During this transition, all parts of the downstream distribution system, from pipelines through terminals, retailers, and wholesale purchaser consumers (WPCs), must designate their fuel for sulfur content. This will start to affect downstream entities as soon as refiners designate their fuel at the refinery gate as ULSD. If a downstream entity receives ULSD and designates it as ULSD, it is subject to the 15 ppm sulfur standard. If the downstream entity re-designates it as LSD, it is subject to the 500 ppm sulfur standard. Under the existing diesel sulfur program, the downstream compliance dates in the regulations are based on the expectation that the transition to ULSD will be completed at the terminal stage by July 15, 2006, and at the retail and WPC stage by September 1, 2006.

These July 15 and September 1 downstream transition dates for the terminal and retail levels do not themselves restrict the relative volumes of LSD and ULSD present in the distribution system downstream of the refiner and importer. Another provision of the regulations, the ''anti-downgrading'' provision, provides the assurance that downstream entities in the system will begin providing the vast majority of the highway diesel fuel as ULSD. This provision establishes the date after which no more than 20 percent of the ULSD highway fuel received by a downstream entity can be re-designated, or downgraded, to 500 ppm highway diesel fuel.[3]

By limiting the volume of 15 ppm highway diesel fuel that can be downgraded to 500 ppm highway fuel, the program helps to ensure that the vast majority of highway diesel fuel that is marketed after that date will be ULSD and that ULSD will be available in all parts of the country for the engines that need it. Without the anti-downgrading limitation, terminals, retailers, and others in the distribution system could continue to blend 15 ppm highway fuel with 500 ppm highway fuel and simply market the fuel as 500 ppm highway fuel. This would have the potential to interfere with the successful implementation of the ULSD highway program by slowing the transition and reducing the volumes of ULSD available at the retail level. In the highway diesel rule, the anti-downgrading requirements were to take effect on June 1, 2006. However, this date was extended to October 1, 2006 in the recent Nonroad Diesel final rule in recognition of the need for mixing of the 15 ppm and 500 ppm fuel as the distribution system is flushed out.[4] The 20 percent downgrading limitation continues until May 31, 2010, after which downgrading is no longer a concern given that all highway diesel fuel must be ULSD.

[2] Such 500 ppm fuel can only be used in model year 2006 and earlier highway diesel engines.

[3] There are no restrictions on the volume of ULSD highway fuel that may be downgraded to heating oil, or nonroad, locomotive, and marine diesel fuel.

[4] In the nonroad diesel rule, EPA concluded that it would be appropriate to have a single anti-downgrading date for all entities in the distribution system rather than set separate dates for terminals and retailers. Furthermore, the date was extended beyond the September 1 retail date in response to industry concerns that in some cases the final transition may take longer.

Although the July 15 and September 1 downstream transition dates for the terminal and retail levels do not themselves restrict the relative volumes of LSD and ULSD, we expect that ULSD will become the predominant highway diesel fuel in most parts of the fuel distribution system well before the implementation of the anti-downgrading requirement. First, the pre-compliance reports compiled to date indicate that beginning June 1, 2006 most distributors will only be able to obtain ULSD or fuel being blended down to ULSD. Second, we expect that refiners will be motivated to bring ULSD to retail as soon as possible so that they can begin to recoup their capital investments through the sale of ULSD. Finally, fuel distributors will need to begin blending down much of their highway diesel fuel to ULSD specifications before the implementation date for the anti-downgrading requirements in order to be in compliance with the anti-downgrading specifications once they become effective. As a result, terminals and retail facilities will begin insisting on delivery of ULSD from their suppliers as soon as possible. Therefore, while the anti-downgrading provision ensures a date-certain for the final completion of the transition, the July 15 and September 1 implementation dates for terminals and retailers/WPCs are important milestones in the transition to ULSD.

B. Recent Concerns About the Transition

All segments of the diesel fuel production and distribution system have been actively taking steps to prepare for the nationwide transition to ULSD fuel. The primary elements of the program are designed to work together to result in a relatively quick and efficient large scale shift from LSD to ULSD throughout the system. These elements include:

- The leadtime provided since the rule was published in 2001,
- The requirement that refiners produce the vast majority of fuel as ULSD by June 1, 2006,
- The sequential implementation dates for refiners/importers, terminals, and retailers, and
- The beginning of the anti-downgrading requirements.

In developing the highway diesel rule, each of these elements was evaluated individually and in combination, and the program was designed to maximize the efficiency and effectiveness of the transition to ULSD fuel. All information available to us continues to indicate that these elements will combine to result in a smooth transition to ULSD in most if not all cases, and no one has expressed concerns about completing the transition for the large bulk of diesel fuel.

However, in recent months, some in the industry have expressed a degree of uncertainty in their ability to complete the transition by the current deadlines in the very farthest reaches of some of the more complex parts of the distribution system. These parts of the system can involve long pipelines, secondary pipeline systems, and several points where the flow of fuel is interrupted by temporary storage in break-out tanks. For these parts of the system, the process of completely blending down the fuel to 15 ppm levels in all the intermediate tanks presents somewhat greater challenges than do less complex systems.

At the same time, the amount of time available to complete the ULSD transition and ensure the widespread availability of the fuel has been balanced with the absolute need for ULSD to be available for use in model year 2007 diesel engines and vehicles. Over the past four years, the engine and vehicle manufacturers have worked hard and have made substantial financial investments to develop sophisticated emission control systems to meet the 2007 emission standards, with the expectation that these systems would only be exposed to ULSD sulfur levels. Thus, the success of the new emission control standards for these engines hinges on the widespread availability of ULSD in time for the coordinated launch of 2007 model year engines and vehicles. Recognizing that transition times that are too long would interfere with the introduction of the new model year 2007 diesel engines designed to operate on ULSD, EPA incorporated this balance in the design of the highway diesel program. The appropriate transition time was the subject of many substantial comments on the proposed rule.

EPA has re-evaluated this balance in light of the uncertainties that have been expressed. We are aware of no information that definitively shows that problems in the distribution system will in fact develop during the transition. In fact, the broad consensus is that for the vast majority of the country, the existing provision of the program should be sufficient. Still, we believe that limited additional flexibility for entities downstream of the refineries would help to address the potential problems that might be faced by certain limited portions of the distribution system. Today's action will facilitate the thorough changeover of diesel fuel and increase the certainty that ULSD will be available on time for use in 2007 engines and vehicles in all parts of the country.

In considering an appropriate degree of additional flexibility for the distribution system as described in the next section, we held extensive consultations with the associations representing the heavy-duty and light-duty engine manufacturing industries, as well as meetings with individual companies. Based on these meetings, we have concluded that it is critical that the end of any additional downstream transition flexibility occur no later than October 15, 2006. We know of several instances in which extending the transition period until October 15 will indeed impact scheduled launch dates for Model Year 2007 engines. It is our understanding that, given the strong assurance that 15 ppm fuel will be broadly available by October 15, these companies are willing to delay their vehicle or engine introductions. However, any further delays would have significant impacts on their ability to launch their 2007 model year product lines and would be considered unacceptable. The actions we are taking today, as discussed next, balance the needs of both the fuel distribution and diesel engine manufacturing entities.

C. Actions EPA Is Taking to Ease the Transition to ULSD

EPA is taking three actions to address the transition concerns that have been raised and to facilitate the smooth transition across the country to ULSD highway fuel. First, in response to concerns raised by the diesel fuel production and distribution industries, EPA is extending by 45 days the dates in the regulations that identify when the transition is expected to be completed by downstream entities. This would now be September 1, 2006 for terminals and all entities upstream of terminals (and downstream of refiner and importer origination facilities), and October 15 for retailers and WPCs.[5] Second, for consistency with this change of dates, EPA is also extending the deadline for meeting the anti-downgrading requirements until October 15, 2006. This will mean that prior to that date entities can redesignate the ULSD highway fuel received from the refinery to LSD highway fuel without restriction, but after that date the ability to redesignate

[5] The change in the implementation date applies only to the sulfur standard of 40 CFR 80.520(a), not the dye requirements of 40 CFR 80.520(b). We do not believe that a similar delay in the implementation date for the dye requirements is needed or would be of value to entities in the distribution system.

ULSD as 500 ppm highway fuel will be significantly restricted.

Together, we expect that these changes will ensure that even the most remote parts of the distribution system will have sufficient time to transition to ULSD in an orderly way. With this additional time, all entities in the distribution system will be better able to learn how the system is responding as large volumes of very low sulfur fuel begin to flow, while still having sufficient time to react as necessary based on what they and others learn. Thus, they will be in a better position to complete the flushing of LSD from the system while minimizing capital expenditures for temporary measures otherwise needed only during the transition. Based on confidential conversations with engine and vehicle manufacturers, any extension beyond October 25 would have a serious impact on the introduction of new MY 2007 highway diesel engines.

With these changes, the expected end of the transition for retail outlets and the anti-downgrading date are now aligned. Thus, the date established in today's action for the end of the additional retail transition flexibility (October 15, 2006) is now supported by the beginning of the anti-downgrading restriction on the same date. This alignment will help encourage retail entities to plan the transition of their diesel fuel so that not only will all ULSD they sell by October 15, 2006 be 15 ppm, but also the vast majority of all highway fuel they sell will be ULSD under the anti-downgrading provision.[6] [7]

Finally, the third action EPA is taking to facilitate the transition to ULSD is to temporarily allow diesel fuel at a sulfur level of 22 ppm to be distributed downstream of the refinery as ULSD during this extended transition period.[8] The existing program provides for a 2 ppm adjustment for sulfur test results of downstream diesel fuel, to account for testing variability. Today's revision temporarily allows an additional downstream adjustment of 7 ppm—to account for downstream sulfur contamination that may occur as the system transitions to ULSD—for a total adjustment of 9 ppm. This temporary increase applies for the same additional 45 days noted above, expiring before the expected introduction of new 2007 model year highway diesel engines.

This additional adjustment factor is designed to help the transition by making it more likely that fuel will be classified by downstream entities as ULSD as early as possible, and that it will stay classified as ULSD throughout the distribution system. This will make it easier for the points near the end of the distribution system to keep the ULSD classification for the diesel fuel they receive as ULSD. During the transition to ULSD fuel, entities in the distribution system may find themselves in possession of fuel with test results slightly above 15 ppm sulfur, and we believe it will be beneficial if they are temporarily able to continue treating this fuel as ULSD during this transition period. This will reduce the perceived need for entities near the end of the distribution system to downgrade ULSD to 500 ppm LSD because of concern over liability from low level contamination remaining in the system. Reducing the need to downgrade will maximize the volume of highway fuel distributed as ULSD, which will help to ensure a timely transition to ULSD.

II. Amendments To Ensure the Enforceability of the Highway Diesel Program

As discussed in the previous section on the amendments to the ULSD transition provisions, the benefits of the highway diesel program depend on ensuring that beginning October 15, 2006 the predominant fuel available at retail for use in highway diesel engines meets a 15 ppm sulfur standard. The highway diesel program's Temporary Compliance Option (TCO) provides that up to 20 percent of highway diesel fuel produced by a refiner or introduced by an importer may continue to meet a 500 ppm sulfur standard until June 1, 2010.[9] Beginning December 1, 2010, all fuel used in any highway diesel engine must meet a 15 ppm sulfur standard.

The nonroad diesel program requires that beginning June 1, 2007, diesel fuel produced for use in nonroad, locomotive, and marine diesel engines (NRLM diesel fuel) must meet a 500 ppm sulfur standard.[10] The nonroad program also provides for the generation of early credits for the production of 500 ppm NRLM diesel fuel beginning June 1, 2006. Thus, from June 1, 2006 through December 1, 2010, we expect that there will be both 500 ppm NRLM and 500 ppm highway diesel fuel in the diesel fuel distribution system. While 500 ppm highway diesel fuel may be used in highway or nonroad engines or other suitable distillate fuel applications without restriction, the nonroad rule closely controls how much 500 ppm diesel fuel that is designated as NRLM may be shifted for use in highway vehicles, in order to maintain the integrity of the highway program (by ensuring the production of 15 ppm diesel fuel).

In the 1993 highway diesel rule, EPA generally required that any diesel fuel that does not show visible evidence of red dye would be subject to all of the requirements applicable to highway diesel fuel. To comply with this requirement, refiners add a visible trace of red dye to non-highway diesel fuel prior to it leaving the refinery gate. If this requirement were maintained, there would be no difficulty in differentiating 500 ppm highway diesel fuel from other diesel fuel. During the development of the nonroad diesel rule, fuel distributors requested that EPA provide that 500 ppm NRLM fuel not be subject to the refinery gate red dye requirement. This would allow for the fungible shipment of 500 ppm NRLM and 500 ppm highway diesel until the point in the distribution system where NRLM diesel fuel must be dyed red to indicate its non-tax status (that is, prior to leaving the terminal).[11] Commenters stated that there would be a substantial savings in fuel distribution costs if the two grades of 500 ppm diesel fuel could be fungibly mixed until they leave the terminal.[12]

In considering this request from distributors in the nonroad diesel rule, EPA recognized that in the absence of the refinery gate red dye provisions, 500 ppm sulfur highway diesel fuel allowed under the highway diesel fuel program's TCO and 500 ppm NRLM diesel fuel would be physically the same up to the point where the NRLM leaves the terminal and is dyed for tax purposes. Therefore, maintaining the benefits and integrity of the highway diesel fuel

[6] Under the existing program, these aspects of the program were not aligned. After the end of the retail transition period, September 1, 2006, and before the anti-downgrading date of October 1, 2006, retailers that wished to sell 15 ppm fuel as ULSD would have been able to downgrade as much of that fuel as they wished, which might have unnecessarily slowed the overall transition.

[7] Some entities have indicated that their recordkeeping systems may not readily allow for a mid-month start to a compliance period. Therefore, we would allow them to maintain the original October 1, 2006 date at their option.

[8] Currently, a downstream batch of ULSD with test results of 17 ppm is treated as in compliance with the 15 ppm sulfur standard. Under this temporary revision, a downstream batch of ULSD with test results of 24 ppm would be in compliance with the sulfur standard for ULSD. In both cases, this downstream adjustment only applies to testing of diesel fuel after it leaves the refinery, it does not apply to a refiner's or importer's fuel.

[9] Such 500 ppm fuel can only be used in model year 2006 and earlier highway diesel engines.

[10] The nonroad program includes small refiner and credit provisions that provide for the limited production of high sulfur (>500 ppm) NRLM diesel fuel until June 1, 2010.

[11] Pursuant to Internal Revenue Service Requirements (26 U.S.C. 4082).

[12] This is primarily due to the reduced need for segregated storage tanks prior to leaving the terminal.

program required some means of differentiating highway diesel fuel from NRLM diesel fuel throughout the distribution system. For example, if a refiner produced all 500 ppm sulfur fuel and designated it as NRLM diesel fuel, that refiner would have no obligation to produce any 15 ppm sulfur highway diesel fuel. Without an effective way of limiting the use in the highway market of 500 ppm sulfur diesel fuel produced as NRLM diesel fuel, much more 500 ppm sulfur fuel could find its way into the highway market than would otherwise happen under the highway program. This in turn could displace 15 ppm sulfur diesel fuel that would have otherwise been produced. This series of events would circumvent the intent of the highway program's TCO and sacrifice some of the resulting particulate matter (PM) and sulfur dioxide (SO_2) emission benefits of the overall highway diesel program. If this occurred to any significant degree, it could also undermine the integrity of the highway program by threatening the widespread availability of 15 ppm sulfur diesel fuel nationwide for the vehicles that will need it.

In lieu of the refinery gate red dye requirement, commenters suggested that EPA adopt accounting provisions to ensure that 500 ppm NRLM diesel fuel is not inappropriately shifted into the highway diesel market downstream of the refinery. Working cooperatively with industry, we developed provisions that require the designation of fuel and the tracking and balancing of fuel volumes, as well as related recordkeeping and reporting concerning the fuels received and delivered. Among other things, this allows for the fungible shipment of 500 ppm highway and 500 ppm NRLM diesel fuel up to the point where such fuel leaves the terminal, while controlling the shift of NRLM fuel into the highway market. In the nonroad diesel final rule, we promulgated such accounting provisions allowing for the removal of the dye requirement and fungible distribution of 500 ppm diesel fuel. These provisions are part of the designation and tracking requirements adopted in the nonroad diesel rule.

We intended that the removal of the dye requirement for 500 ppm NRLM diesel fuel coincide with the implementation date for the downstream limitations on redesignating 500 ppm NRLM as 500 ppm highway fuel. By linking these dates, the integrity of the highway diesel program would be protected by the dye requirement for 500 ppm NRLM until its removal, and by the related designate and track requirements thereafter. However, the date specified in the regulatory text for the removal of the dye requirement for 500 ppm diesel fuel designated as NRLM was set earlier than the effective date for the requirements that restrict the ability to redesignate 500 ppm NRLM as 500 ppm highway diesel fuel. The effective date for the removal of the refinery gate red dye requirement for 500 ppm NRLM is June 1, 2006, whereas the effective date for the requirements that restrict the ability to redesignate 500 ppm NRLM as 500 ppm highway diesel fuel is June 1, 2007. Thus, for the period of June 1, 2006 through June 1, 2007, when refiners can produce 500 ppm NRLM for early credit, there is a ''gap'' in the designate and track regulations, resulting in the lack of effective regulatory requirements to prevent the misdirection of non-highway 500 ppm diesel fuel into the highway diesel market.

A. Description of Today's Action

Today's action amends the diesel fuel program to require that beginning June 1, 2006, any entity that receives and/or distributes 15 ppm or 500 ppm highway diesel fuel must demonstrate compliance with the requirements limiting the redesignation of 500 ppm NRLM to 500 ppm highway fuel. Each entity that distributes and/or receives 15 ppm and/or 500 ppm highway diesel fuel after that date will be required to demonstrate compliance with these requirements during each quarterly compliance period beginning June 1, 2006. Each such entity will also have to report to EPA on the volume of 15 ppm and 500 ppm highway diesel fuel that they receive and distribute, broken down by exchange partner.

As discussed in the next section, we believe that the approach we are establishing today will be effective in closing the unintended gap in the designate and track regulations. In addition, it has advantages over several other approaches that we evaluated. The next section describes each of the options we evaluated and also describes provisions we are including to mitigate any negative impact of this change on entities that distribute diesel fuel.

B. Evaluation of Options

In evaluating how best to resolve this regulatory gap in the designate and track regulations, EPA evaluated three options. One option we evaluated would require that all undyed 500 ppm diesel fuel be designated as motor vehicle (highway) diesel fuel from June 1, 2006 through May 31, 2007. Since all undyed 500 ppm fuel would be considered highway diesel fuel, there would be no way for refiners to direct 500 ppm NRLM fuel into the highway market, thus helping to maintain the integrity of the highway diesel program. However, this approach would need to include the elimination of the NRLM program provisions that allow the generation of early credits via the sale of 500 ppm NRLM fuel before June 1, 2007.

The elimination of the early NRLM credit provisions could significantly impact refiners planning to generate and/or use early 500 ppm NRLM credits. In addition, such an approach might result in the shifting of more 500 ppm fuel production to the highway market than would have otherwise occurred, interfering with the flexibility offered by the temporary compliance option (TCO) in the highway diesel program. It is very late in the planning process for any refiners planning to use any of these flexibilities in the NRLM and highway diesel programs. Consequently, we do not believe it would be appropriate to pursue this option.

Another option we evaluated would address the timing problem by moving the effective date of the removal of the red dye requirement for 500 ppm NRLM diesel fuel from June 1, 2006 to June 1, 2007. By requiring that 500 ppm NRLM fuel continue to be dyed at the refinery gate, the integrity of the highway diesel program would be maintained, since the dye would prevent NRLM from being diverted into the highway diesel pool during that period. The serious problem with this approach, however, is that refiners or importers, as well as pipelines and terminals, that are planning to ship 500 ppm fuel for the highway and NRLM markets together would be prevented from doing so. Again, especially because of the late date, we believe it would be inappropriate to change the program in ways that may significantly change diesel fuel production and distribution plans.

The third option that that we evaluated, and, as described above, the one we are adopting today, would amend the diesel fuel program to begin certain designate and track provisions on June 1, 2006. Thus, any downstream entity that receives and/or distributes 15 ppm or 500 ppm highway diesel fuel after that date would need to demonstrate, for these fuels, compliance with the limitations on redesignating 500 ppm NRLM as 500 ppm highway fuel. We believe that this approach is most consistent with the express purpose of the provisions of the nonroad rule—to allow refiners and importers to freely mix 500 ppm highway and NRLM diesel fuel in the absence of the red dye requirement

while maintaining the integrity of the highway diesel fuel program. We also believe that this approach will result in the least number of substantive changes to the existing program.

Members of the fuel industry have noted that some fuel distributors may have to establish reporting systems earlier than they had planned. However, we have assessed the additional reporting and recordkeeping requirements of this action and we have concluded that the additional resources some entities may need to expend in response to today's action will be relatively modest and the available lead time should be sufficient. However, in response to industry concerns expressed about these unanticipated requirements, today's action contains two provisions to help mitigate these concerns. First, as mentioned above, the new, earlier hand-off reporting requirements will be limited to 15 ppm and 500 ppm highway diesel fuel transfers for the first four quarterly compliance periods (*i.e.*, no new reporting will be required for NRLM fuel.) Second, today's action allows entities to partially consolidate their designate and track requirements during the first year of the highway diesel program. Thus, the highway diesel volume balance and hand-off reporting requirements for the first two quarterly compliance periods may be combined, as may those of the third and fourth compliance periods. Although some entities may need to establish reporting systems earlier than they had anticipated, this provision reduces the reporting burden considerably for the first year.

Finally, EPA received four additional suggestions that, on further consideration, we believe would be unworkable. One of these was to make use of the existing anti-downgrade provisions to restrict the shifting of 500 ppm NRLM into the highway diesel pool during the first year of the program until the D&T requirement originally intended for this purpose becomes effective. However, in order for the anti-downgrade provision to conceivably accomplish the purpose of closing the gap in the highway diesel fuel program, the intended purposes of the provisions would be largely lost. For example, the most straightforward of four options that refiners and importers have to demonstrate that they are meeting the downgrading restrictions would need to be eliminated during the first year, since it could allow significant shifting of 500 ppm fuel into the highway diesel pool. In addition, as described above, the issues of inconsistent dates (June 1, 2006 vs. October 15, 2006 [13]) and lack of reporting requirements would also need to be addressed in any revision of the anti-downgrading provisions. Overall, we believe that using the anti-downgrading provisions to resolve the problem is unworkable. In any event, to modify the anti-downgrade provisions to correct the shortcomings would have no advantage over the approach being finalized today.

The second concept suggested to us would have some characteristics of the approach we are adopting in this rule. However, instead of requiring that the highway fuel volume balance and hand-off reporting begin on June 1, 2006, this concept would introduce a new provision that would require a balance of NRLM fuel and associated reporting during that first year of the program. While this concept would have the possible benefit of limiting attention to the pool of fuel most likely to create problems for the program—that is 500 ppm NRLM produced for early credit purposes, it has other major problems.

For example, downgrades or losses from the 500 NRLM pool would result in noncompliance. More importantly, 500 ppm from other pools (*e.g.*, jet fuel) would not be prevented from entering the highway pool. Further, a volume balance is not otherwise required for NRLM fuel under the designate and track regulations. Thus, this approach would represent a significant and yet temporary change to the program; requiring the establishment of recordkeeping and reporting requirements now that would have no use later. We do not believe the concept represents a workable alternative to the approach we are adopting.

A third suggestion was that perhaps the approach we are finalizing could be limited only to those facilities that handle 500 ppm NRLM. However, we have concluded that such a concept would not be adequately enforceable. This is because without highway fuel balance requirements and hand-off reports, it would not always be possible to trace the complete line of hand-offs and demonstrate whether any 500 ppm NRLM fuel entered the highway market. Further, it would likely suffer from confusion caused by new facilities that entered into the 500 ppm NRLM market as the June 1, 2007 start date for the NRLM diesel program neared and thus began to be subject to the balance and reporting requirements. We believe that this concept would be an unworkable substitute for the approach we have finalized.

A final suggestion was to avoid specific new designate and track requirements by simply introducing a clear prohibition against inappropriate shifts of undyed 500 ppm NRLM fuel into the highway diesel pool. However, without associated tracking and reporting, EPA would have difficulty identifying where instances of non-compliance might be occurring. Although it was suggested that violations would likely be few and that EPA could depend on entities informing EPA of potential violations by their competitors, we believe that this would create too much uncertainty for all parties, including EPA. Further, we are concerned that this uncertainty might embolden some entities to stretch the boundaries of the program requirements. For example, an entity might sell substantial amounts of 500 ppm nonroad as highway fuel or other inappropriate actions. Without a clear highway diesel fuel balance requirement and reporting, we would have limited ability to demonstrate that such actions were ''inappropriate.'' On balance, we believe that the addition of modest new volume balance and reporting requirements between June 1, 2006 and June 1, 2007 represent a necessary component of the program.

We are making several changes to the regulations in order to implement the actions discussed above. In general, this is accomplished by adding 4 earlier quarterly reporting periods and one

[13] Today's action moves the compliance date with the anti-downgrade requirements forward from October 1, 2006 to October 15, 2006. See section I in today's preamble.

earlier annual reporting period covering the period June 1, 2006 to June 1, 2007, as well as allowing some of the reports to be combined. The volume balance and hand-off compliance and reporting requirements for non-highway designated diesel fuels are not affected by today's action.

The following table II–1 lists each of the regulatory provisions that are revised in today's action relating to the actions discussed above.

TABLE II–1.—SUMMARY OF AMENDMENTS TO ENSURE THE ENFORCEABILITY OF THE HIGHWAY DIESEL PROGRAM

Section	Description
80.597	Amended to require registration if an entity intends to deliver or receive custody of any designated fuels by June 1, 2006. In addition to supporting the implementation of the highway volume balance and hand-off requirements in 2006, this amendment is also needed to support compliance with current product transfer document requirements under section 80.590.
80.599	Amended to add 4 quarterly compliance periods covering June 1, 2006–September 30, 2007, October 1, 2006–December 31, 2006, January 1, 2007–March 31, 2007, and April 1, 2007–May 31, 2007, and one annual compliance period covering June 1, 2006–May 31, 2007. Amended to define $MV500_{BINV}$ as the volume of fuel designated as 500 ppm motor vehicle diesel fuel at the beginning of the program (June 1, 2006).
80.600	Amended to require recordkeeping by each facility that receives or distributes 15 ppm or 500 ppm highway diesel fuel beginning June 1, 2006.
80.601	Amended to require reporting regarding demonstration of the new compliance periods added to section 80.599 and to limit reporting to the highway volume balance and highway hand-off requirements for the period of June 1, 2006–May 31, 2007. Provides dates by which reports must be submitted.

III. Amendments to the Registration Requirements for Mobile Facilities

Parties throughout the fuel production and distribution system use mobile components (or mobile vessels- *i.e.*, ships/barges, trucks, rail cars, etc.) to transfer product from one point to another. These are referred to as mobile facilities by EPA for purposes of registration and compliance with the designate and track requirements. Questions have arisen regarding how individual mobile facilities can be aggregated for registration purposes. To provide clarification on how such aggregation might take place, today's action amends the provisions pertaining to the registration of mobile facilities.

Mobile facilities are sometimes owned by an entity in the fuel industry who also owns a stationary facility (*e.g.* terminal) that would be required to be registered with EPA. However, in most cases, the use of a mobile facility is obtained through a contract with another party or entity. Such contracts are often of short duration, and the make-up of the fleet of individual mobile facilities serving a given fuel distributor is continually in flux. Given this situation, fuel distributors stated that requiring every individual mobile facility or entity owning a fleet of individual mobile facilities to register would be unworkable. We agree, and therefore, we believe that it is appropriate to modify the regulations to allow a registered entity to register the mobile facilities that distribute its fuel. Under the current regulations, an entity has to register facilities where they have custody of fuel. For mobile facilities we are allowing an entity to register a mobile facility where the entity has title to the fuel, even if it does not have custody. The registration would, however, only cover the mobile facility for the fuel to which the entity has title.

A registered entity may register one mobile facility, or multiple mobile facilities defined by area or component type. Any number of individual mobile components (*i.e.* ships/barges, trucks, rail cars) could be aggregated under a given mobile facility registration. Specifics regarding the make up of the fleet (*e.g.* number and identity of ships/barges) comprising a mobile facility would not need to be provided to EPA at the time of registration.[14]

Compliance with the designate and track regulations would be the responsibility of the entity that registered the mobile facility. In the event of a designate and track violation, the registered entity would be still presumed liable. However, compliance with the applicable fuel sulfur standard would still be the responsibility of both the registered entity and the owner/operator of the individual mobile component in which the fuel is located. Further, in the event of the discovery of non-compliant product, EPA may apply presumptive liability to the owner of the individual mobile component in which the product is found, the registered entity, and all parties upstream.

The allowance of mobile facilities has resulted in changes to the definition of a facility and the registration and recordkeeping requirements. We have amended the definition of a facility to include the situation of a mobile facility, where a registered entity may not have custody of fuel while it is being transported in a component, but the entity retains title to the product. This change to the definition allows an entity to register a mobile component that is transporting its product as part of the entity's facility. The changes to the regulations allow for this registration of mobile facilities (§ 80.597) and state specifications for additional records that need to be kept for registered mobile facilities (§§ 80.600 and 80.602). These changes are all noted below in Table III–1.

As noted above, the registered entity would be presumed liable in the case of a designate and track violation. We have not made changes to any of the provisions that deal with standards violations, so all requirements for meeting the applicable sulfur, dye, and marker standards remain in place. Thus, any person that could be considered liable for a prohibited act under § 80.613 (any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser consumer) who owned, leased, leased, operated, controlled, or supervised a facility where a violation occurred can be presumed liable if a non-compliant product is found in a mobile facility.

With the exception of the changes discussed above and in Table III–1, there are no additional requirements. Mobile facilities will be treated similar to all other registered facilities in the designate and track system.

[14] The registration of mobile facilities is also discussed in the Mobile Facilities Guidance Document, whish can be found on the Clean Diesel Compliance Help page at (*www.epa.gov/cleandiesel/comphelp*).

TABLE III–1.—SUMMARY OF AMENDMENTS TO THE REGISTRATION REQUIREMENTS FOR MOBILE FACILITIES

Section	Description
80.502	Added additional language to the definitions in paragraph (b) to allow for mobile facilities.
80.597	Added paragraph (d)(3)—registration of mobile facilities.
80.600	Added additional language on recordkeeping requirements for mobile facilities, and renumbered some paragraphs.
80.602	Added additional language on recordkeeping requirements for mobile facilities, and renumbered some paragraphs.

IV. Miscellaneous Other Technical Amendments to the Highway and Nonroad Diesel Programs and the Tier 2 Gasoline Program

After promulgation of the highway diesel, nonroad diesel, and Tier 2 gasoline programs, and subsequent technical amendments, we discovered several typographical errors. It also became evident that several additions/deletions were necessary to clarify portions of the regulations. The amendments contained in today's rule to remedy these problems are summarized in the following Table IV–1.

TABLE IV–1.—SUMMARY OF MISCELLANEOUS TECHNICAL AMENDMENTS TO THE HIGHWAY AND NONROAD DIESEL PROGRAMS AND THE TIER 2 GASOLINE PROGRAM

Section	Description
80.215	Revised to add Klickitat County to the list of Geographic Phase-In Areas.
80.531	Removed and reserved paragraph (c)(2)(ii). This change was inadvertently left out of the regulatory text of the Direct Final Rule published on July 15, 2005 (40 FR 40889) which was intended to allow refiners and importers to generate early credits (June 1, 2005 through May 31, 2006) for the entire volume of ULSD delivered into the distribution system rather than the volume delivered to the end user.
80.533	Corrected the language in (e)(2) to state "B_{NRLM}" instead of "$_{NRLM}$".
80.590	Revised to clarify what parties will be affected by the requirement that transferee ID numbers appear on product transfer documents; revised to clarify how parties shall denote the level of the standard on product transfer documents.
80.592	Revised to change the cite in (a)(2)(iii) from "80.580(a)(4)" to "80.580(d)"
80.593	Revised to correct the section number that is cited in 80.593(a)(7)(i) from "80.523" to "80.598."
80.599	Paragraphs 80.599(b)(4), (b)(5), (e)(2), and (e)(3) were revised to maintain consistency with the symbol conventions in the formulas found in this section.
80.601	Revised paragraph (d)(3) to clarify reporting requirements.
80.602	Revised paragraph (a)(2)(iii) to correct the cite "80.580(a)(4)" to "80.580(d)"; and revised paragraph (b) to correct the cite "80.660" to "80.560."

V. Public Participation

Because EPA views the provisions of the action as noncontroversial and does not expect adverse comment, we are proceeding by direct final rulemaking. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, or receive a request for hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- 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, EPA has determined that this final rule is not a "significant regulatory action". Today's action moves the implementation date for certain recordkeeping and reporting requirements under the highway diesel program from June 1, 2007 to June 1, 2006 for an additional one time cost of $11,570,000 (see sections II and IV.B. in today's preamble). Today's final rule extends the terminal and retail ULSD implementation dates, and the effective date of the anti-downgrading requirement, and increases the downstream sulfur adjustment factor during the transition period to ULSD (see section I in today's preamble). There are no new costs associated with these provisions. There are also no new costs associated with the other miscellaneous technical amendments to the highway diesel, nonroad diesel, and Tier 2 gasoline programs contained in today's notice (see section III in today's preamble). Therefore, this final rule is not subject to the requirements of Executive Order 12866. Final Regulatory Support Documents were prepared in connection with the original regulations for the Highway Diesel Rule, Nonroad Diesel Rule, and Tier 2 gasoline rule as promulgated on January 18, 2001, June 29, 2004, and February 10, 2000

respectively, and we have no reason to believe that our analyses in the original rulemakings were inadequate. The relevant analyses are available in the docket for the January 18, 2001 rulemaking (A–99–061), the June 29, 2004 rulemaking (OAR–2003–0012 and A–2001–28) [1], and the February 10, 2000 rulemaking (A–97–10), and at the following Internet addresses: *http://www.epa.gov/cleandiesel* and *http://www.epa.gov/tier2.* The original actions were submitted to the Office of Management and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

The annual information collection burden associated with this action was accounted for in previously approved ICRs. The provisions of this direct final rule provide limited additional flexibility to entities in the highway diesel distribution system during the transition to ultra-low sulfur diesel fuel in 2006. The other miscellaneous amendments in today's notice contain technical corrections and clarifications which do not include any new information collection requirements. The amendments to the designate and track provisions under the highway and nonroad diesel programs contained in section II of today's direct final rule require compliance with these provisions beginning June 1, 2006. Compliance with these provisions was previously required beginning June 1, 2007. The annual compliance burden associated with these provisions is not affected by advancing the implementation date by one year. This annual burden was accounted for in the current information collection request for the highway and nonroad diesel fuel programs. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing highway rule (66 FR 5002, January 18, 2001), the existing Nonroad Rule (69 FR 38958, June 29, 2004), and the existing Tier 2 gasoline rule (65 FR 6698, February 10, 2000), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The ICRs contained in the highway diesel and nonroad diesel rules were assigned OMB control number 2060–0308, and EPA ICR number 1718.06. This ICR is currently being revised to reflect the change in the implementation date for the pertinent designate and track requirements from June 1, 2007 to June 1, 2006. The annual compliance burden for the full designate and track requirement beginning in June 1, 2007 was estimated at $11,570,000 and 178,000 hours. The designate and track requirements that today's rule make effective June 1, 2006, are for a limited subset of designated fuels (highway diesel only), and the reporting requirements for the initial year (June 1, 2006–May 31, 2007) were abbreviated by today's rule. Therefore, the annual burden for the initial year is expected to be somewhat less than that estimated for following years.

The ICRs contained in the Tier 2 gasoline rule were assigned OMB control number 2060–0437, and EPA ICR number 1907.02. A copy of the OMB approved Information Collection Requests (ICRs) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meets the definition for a small business based on Small Business Administration (SBA) size standards; (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 ULSD transition provisions in today's direct final rule provide limited, temporary flexibility to entities in the highway diesel distribution system downstream of the refineries and import facilities. Advancing the implementation date for certain recordkeeping and reporting requirements under the highway diesel program as described in section II of today's preamble will result in additional one year of cost of compliance with these provisions for all affected fuel distributors, including those that are small entities. During the rulemaking that resulted in the promulgation of these provisions, we determined that they would not have a significant impact on a substantial number of small entities. The other miscellaneous technical amendments to the highway diesel, nonroad diesel, and Tier 2 gasoline programs do not impose a significant new burden to any regulated party.

Prior to proposing the Highway Rule on June 2, 2000, the Nonroad Rule on May 23, 2003, and the Tier 2 Gasoline Rule on May 13, 1999 EPA conducted outreach to small entities and convened Small Business Advocacy Review (SBAR) panels to obtain the advice and recommendations of representatives of the small entities that potentially would be subject to the requirements of the rules (66 FR at 5130, 69 FR at 39155–6, and 69 FR 39155–39162 respectively). For a full description of the Panel process, the SBAR report, and the initial Regulatory Flexibility Analyses (in Chapters 8, 11, and 8 respectively) of each rule's Regulatory Impact Analysis (RIA), refer to the docket for the Highway Diesel Rule (Public Docket A–99–061), the Nonroad Diesel Rule (Public Docket OAR–2003–0012 and A–2001–28), and the Tier 2 Gasoline Rule (Public Docket A–97–10), and the following Internet addresses: *http://www.epa.gov/cleandiesel/* and *http://www.epa.gov/tier2/*

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

[1] During the course of the Nonroad Rule, the Agency converted from the legacy docket system to the current electronic docket system (EDOCKET).

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 to 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 of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for the following: 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.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. The requirements of UMRA therefore do not apply to this action.

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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, imposes substantial direct compliance costs, and is not required by statute. However, if the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation, these restrictions do not apply. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This 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. Although Section 6 of Executive Order 13132 did not apply to the Highway Rule (66 FR 5002) or the Nonroad Rule (69 FR 38958), EPA did consult with representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. This rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

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 direct final rule provides limited, temporary flexibility to entities in the highway diesel distribution system downstream of the refineries and import facilities. Other amendments contained in today's action pertain to ensuring the enforceability of the highway diesel program. The remaining amendments in today's final rule provide technical correction and clarification to the requirements under the highway diesel, the nonroad diesel, and the Tier 2 gasoline programs.

I. National Technology Transfer and Advancement Act

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 doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. Thus, we have determined that the requirements of the NTTAA do not apply.

J. Congressional Review Act

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

VII. Statutory Provisions and Legal Requirements

The statutory authority for this action comes from sections 211(c) and (i) of the Clean Air Act as amended 42 U.S.C. 7545(c) and (i). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1). Additional support for the procedural and enforcement related aspects of the rule comes from sections 144(a) and 301(a) of the Clean Air Act. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protections, Diesel fuel, Fuel additives, Gasoline, Motor vehicle Pollution, Penalties, Recordkeeping and reporting requirements.

Dated: November 8, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended and set forth below.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

■ 2. Section 80.215 is amended in paragraph (a)(2)(i) under the heading for ''Washington'' by adding a new entry for ''Klickitat'' in alphabetical order to read as follows:

§ 80.215 What is the scope of the geographic phase-in program?

(a) * * *

(2) * * *

(i) * * *

* * * * *

Washington

* * * * *

Klickitat

* * * * *

■ 3. Section 80.500 is amended by revising paragraphs (b) and (c) to read as follows:

§ 80.500 What are the implementation dates for the motor vehicle diesel fuel sulfur control program?

* * * * *

(b) *Implementation date for standards applicable to motor vehicle diesel fuel downstream of the refinery or importer.* Except as provided in paragraphs (c) and (d) of this section, beginning September 1, 2006, the standards and requirements under § 80.520(a) shall apply to any motor vehicle diesel fuel at any downstream location.

(c) *Implementation date for standards applicable to motor vehicle diesel fuel at retail outlets and wholesale purchaser-consumer facilities.* Except as provided in paragraph (d) of this section, beginning October 15, 2006, the standards and requirements under § 80.520(a) shall apply to any motor vehicle diesel fuel at any retail outlet or wholesale purchaser-consumer facility.

* * * * *

■ 4. Section 80.502 is amended by revising paragraphs (b)(2), and (b)(4) to read as follows:

§ 80.502 What definitions apply for purposes of this subpart?

* * * * *

(b) * * *

* * * * *

(2) A refinery or import facility may not be aggregated with facilities that receive fuel from other refineries or import facilities, either directly or indirectly. For example, a refinery may not be aggregated with a terminal that receives any fuel from a common carrier pipeline. However, a refinery may be aggregated with a pipeline and terminal that are owned by the same entity and which receive no fuel from any source other than the refinery. Likewise, a refinery may not be aggregated with a mobile facility that is also carrying another entity's fuel; it may however be aggregated with a mobile facility that does not receive fuel from any source other than the refinery. If a refinery or import facility is aggregated with other facilities, then the aggregated facility is treated as a refinery or import facility.

* * * * *

(4) Mobile components and mobile facilities. (i) Where an entity maintains custody of diesel fuel in one or more mobile components (*e.g.*, rail, barge, shipping, or trucking operations), the mobile components may be aggregated as a single facility. Mobile components may also be aggregated with a facility from which they receive fuel or a facility to which they deliver fuel. However, mobile components may not be aggregated with both a facility from which they receive fuel and a facility to which they deliver fuel.

(ii) When an entity maintains title to, but not custody of, diesel fuel in one or more mobile components, the entity may treat the mobile component(s) as a facility under this paragraph (b), but only for the fuel to which the entity has title. In the event that title changes while a mobile component is in transport (but the fuel physically remains in the same mobile facility), the original entity that had title to the fuel continues to be responsible for the

designate and track requirements until custody of the fuel is transferred from the mobile facility.

* * * * *

§ 80.531 [Amended]

■ 5. Section 80.531 is amended by removing and reserving paragraph (c)(2)(ii).

■ 6. Section 80.533 is amended by revising paragraph (e)(2) to read as follows:

§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline?

* * * * *

(e) * * *

(2) Under paragraph (c)(2)(ii) of this section, B_{NRLM} equals the average annual volume of MVNRLM produced or imported from January 1, 2006 through December 31, 2008, less B_{MV} as determined in paragraph (d)(2) of this section.

* * * * *

■ 7. Section 80.580 is amended by revising paragraph (d) to read as follows:

§ 80.580 What are the sampling and testing methods for sulfur?

* * * * *

(d) Adjustment factor for downstream test results. (1) An adjustment factor of negative two ppm sulfur shall be applied to the test results from any testing of motor vehicle diesel fuel or NRLM diesel fuel downstream of the refinery or import facility, to account for test variability, but only for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.510(b) or § 80.520(a)(1).

(2) In addition to the adjustment factor provided in paragraph (d)(1) of this section, prior to September 1, 2006, an adjustment factor of negative 7 ppm shall be applied to the test results from any testing of motor vehicle diesel fuel downstream of the refinery or import facility, to facilitate the transition to ULSD fuel, but only for testing of motor vehicle diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.520(a)(1).

(3) In addition to the adjustment factor provided in paragraph (d)(1) of this section, prior to October 15, 2006, an adjustment factor of negative 7 ppm shall be applied to the test results from any testing of motor vehicle diesel fuel at any retail outlet or wholesale purchaser-consumer facility, to facilitate the transition to ULSD fuel, but only for testing of motor vehicle diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.520(a)(1).

* * * * *

■ 8. Section 80.590 is amended by revising paragraphs (a)(6)(i) and (d) to read as follows:

§ 80.590 What are the product transfer document requirements for motor vehicle diesel fuel, NRLM diesel fuel, heating oil and other distillates?

(a) * * *

(6) * * *

(i) The facility registration number of the transferor and transferee, for terminals and all parties upstream, under § 80.597, if any.

* * * * *

(d) Except for transfers to truck carriers, retailers or wholesale purchaser-consumers, product codes may be used to convey the information required under this section if such codes are clearly understood by each transferee. ''15'', ''500'', or ''greater than 500'' or ''>500'' must appear clearly on the product transfer document, and may be contained in the product code. If the designation is included in the code: codes used to convey the statement in paragraphs (a)(7)(i) and (a)(7)(ii) of this section must contain the number ''15'', codes used to convey the statement in paragraphs (a)(7)(iii) and (a)(7)(iv) of this section must contain the number ''500''; codes used to convey the statement in paragraph (a)(7)(v) of this section must contain the statement ''greater than 500'' or ''>500''. If another letter, number, or symbol is being used to convey any of the statements in paragraphs (a)(7)(i), (a)(7)(ii), (a)(7)(iii), (a)(7)(iv), and/or (a)(7)(v) of this section, it must be clearly defined and denoted on the product transfer document.

* * * * *

■ 9. Section 80.592 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 80.592 What records must be kept by entities in the motor vehicle diesel fuel and diesel fuel additive distribution systems?

(a) * * *

(2) * * *

(iii) The results of the tests for sulfur content (including, where applicable, the test results with and without application of the adjustment factor under § 80.580(d)) and for cetane index or aromatics content (as applicable), and the volume of product in the storage tank or container from which the sample was taken.

* * * * *

■ 10. Section 80.593 is amended by revising paragraph (a)(7)(i) to read as follows:

§ 80.593 What are the reporting requirements for refiners and importers of motor vehicle diesel fuel subject to temporary refiner relief standards?

* * * * *

(a) * * *

(7) * * *

(i) The batch number assigned using the batch numbering conventions under § 80.65(d)(3) and the appropriate designation under § 80.598.

* * * * *

■ 11. Section 80.597 is amended by revising paragraph (c) and adding paragraph (d)(3) to read as follows:

§ 80.597 What are the registration requirements?

* * * * *

(c) Entity registration. (1) Each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2006 through May 31, 2010 must register with EPA by December 31, 2005 or six months prior to commencement of producing, importing, or distributing any distillate subject to designation under § 80.598:

(i) Fuel designated as 500 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(ii) Fuel designated as 15 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(iii) Fuel designated as NRLM diesel fuel under § 80.598 that is undyed pursuant to § 80.520.

(2) Each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2007 through May 31, 2014 must register with EPA by December 31, 2005 or six months prior to commencement of producing, importing, or distributing any distillate subject to designation under § 80.598:

(i) Fuel designated as 500 ppm sulfur MVNRLM diesel fuel under § 80.598 on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

(ii) Fuel designated as NRLM diesel fuel under § 80.598 that is undyed pursuant to § 80.520.

(iii) Fuel designated as heating oil under § 80.598 that is unmarked pursuant to § 80.510(d) through (f).

(iv) Fuel designated as LM diesel fuel under § 80.598(a)(2)(iii) that is unmarked pursuant to § 80.510(e).

(3) Registration shall be on forms prescribed by the Administrator, and shall include the name, business address, contact name, telephone number, e-mail address, and type of production, importation, or distribution activity or activities engaged in by the entity.

(4) Registration shall include the information required under paragraph (d) of this section for each facility owned or operated by the entity that delivers or receives custody of a fuel described in paragraphs (c)(1) and (c)(2) of this section.

(d) * * *

(3) Mobile facilities:

(i) A description shall be provided in the registration detailing the types of mobile vessels that will likely be included and the nature of the operations.

(ii) Entities may combine all mobile operations into one facility; or may split the operations by vessel, region, route, waterway, etc. and register separate mobile facilities for each.

(iii) The specific vessels need not be identified in the registration, however information regarding specific vessel contracts shall be maintained by each registered entity for its mobile facilities, pursuant to § 80.602(d).

* * * * *

■ 12. Section 80.598 is amended by revising paragraph (b)(9)(vi) to read as follows:

§ 80.598 What are the designation requirements for refiners, importers, and distributors?

(b) * * *

(9) * * *

(vi) Batches or portions of batches received designated as 500 ppm sulfur NRLM diesel fuel may be re-designated as 500 ppm sulfur motor vehicle diesel fuel by a truck loading terminal only if the terminal maintains a neutral or positive balance at the end of each quarterly compliance period on their motor vehicle diesel fuel volume from June 1, 2006 as calculated in § 80.599(b)(4).

* * * * *

■ 13. Section 80.599 is amended by revising the table in the introductory text in paragraph (a), the table in paragraph (a)(1), and by revising paragraphs (b)(4), (e)(2), and (e)(3) to read as follows:

§ 80.599 How do I calculate volume balances for designation purposes?

(a) * * *

Beginning date of quarterly compliance period	Ending date of quarterly compliance period
June 1, 2006	September 30, 2006.
October 1, 2006	December 31, 2006.
January 1, 2007	March 31, 2007.
April 1, 2007	May 31, 2007.
June 1, 2007	September 30, 2007.
October 1, 2007	December 31, 2007.
January 1, 2008	March 31, 2008.
April 1, 2008	June 30, 2008.
July 1, 2008	September 30, 2008.
October 1, 2008	December 31, 2008.
January 1, 2009	March 31, 2009.
April 1, 2009	June 30, 2009.
July 1, 2009	September 30, 2009.
October 1, 2009	December 31, 2009.
January 1, 2010	March 31, 2010.
April 1, 2010	May 31, 2010.
June 1, 2010	September 30, 2010.

(1) * * *

Beginning date of annual compliance period	Ending date of annual compliance period
June 1, 2006	May 31, 2007.
June 1, 2007	June 30, 2008.
July 1, 2008	June 30, 2009.
July 1, 2009	May 31, 2010.
June 1, 2010	June 30, 2011.
July 1, 2011	May 31, 2012.
June 1, 2012	June 30, 2013.
July 1, 2013	May 31, 2014.
June 1, 2014	June 30, 2015.

* * * * *

(b) * * *

(4) The neutral or positive volume balance required for purposes of compliance with § 80.598(b)(9)(vi) and (b)(9)(vii)(A) means that the net balance of motor vehicle diesel fuel in inventory as of the end of the last day of the compliance period ($MVNB_E$) must be greater than or equal to zero. MVNBE is defined by the following equation:

$$MVNB_E = MV15_{BINV} + MV500_{BINV} + \Sigma MVB$$

Where:

$MV15_{BINV}$ = the total volume of fuel designated as 15 ppm sulfur motor vehicle diesel fuel in inventory at the beginning of the program on June 1, 2006.

$MV500_{BINV}$ = the total volume of fuel designated as 500 ppm sulfur motor vehicle diesel fuel in inventory at the beginning of the program on June 1, 2006. Any #2D 500 ppm sulfur MVNRLM in inventory at the beginning of the program on June 1, 2006 may be designated as motor vehicle diesel fuel.

ΣMVB = the sum of the balances for motor vehicle diesel fuel for the current compliance period and previous compliance periods.

* * * * *

(e) * * *

(2) The volume of #2D 15 ppm sulfur motor vehicle delivered must meet the following requirement:

$$(\#2MV15_O + \#2MV15_{INVCHG}) \geq 0.8 * \#2MV15_I$$

Where:

$\#2MV15_O$ = the total volume of fuel delivered during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel.

$\#2MV15_{INVCHG}$ = the total volume of diesel fuel designated as #2D 15 ppm sulfur motor vehicle diesel fuel in inventory at the end of the compliance period minus the total volume of #2D 15 ppm sulfur motor vehicle diesel fuel in inventory at the beginning of the compliance period, and accounting for any corrections in inventory due to volume swell or shrinkage, difference in measurement calibration between receiving and delivering meters, and similar matters, where corrections that increase inventory are defined as positive.

$\#2MV15_I$ = the total volume of fuel received during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel.

(3) The volume of #2D 500 ppm sulfur motor vehicle diesel fuel delivered must meet the following requirement:

$$\#2MV500_O \leq \#2MV500_I - \#2MV500_{INVCHG} + 0.2 * \#2MV15_I$$

Where:

$\#2MV500_O$ = the total volume of fuel delivered during the compliance period that is designated as #2D 500 ppm sulfur motor vehicle diesel fuel.

$\#2MV500_I$ = the total volume of fuel received during the compliance period that is designated as #2D 500 ppm sulfur motor vehicle diesel fuel.

$\#2MV500_{INVCHG}$ = the total volume of diesel fuel designated as #2D 500 ppm sulfur motor vehicle diesel fuel in inventory at the end of the compliance period minus the total volume of #2D 500 ppm sulfur motor vehicle diesel fuel in inventory at the beginning of the compliance period, and accounting for any corrections in inventory due to volume swell or shrinkage, difference in measurement calibration between receiving and delivering meters, and similar matters, where corrections that increase inventory are defined as positive.

* * * * *

■ 14. Section 80.600 is amended by revising paragraphs (b)(1)(i) introductory text, (b)(1)(i)(C), (b)(1)(i)(D), (b)(3), (i), (j), (k), and (l), and adding paragraph (m) to read as follows:

§ 80.600 What records must be kept for purposes of the designate and track provisions?

* * * * *

(b) * * *

(1) * * *

(i) For each facility that receives or distributes #2D 15 ppm sulfur motor vehicle diesel fuel or #2D 500 ppm sulfur motor vehicle diesel fuel, records for each batch of diesel fuel with the following designations for which custody is received or delivered during the time period from June 1, 2006 through May 31, 2007:

* * * * *

(C) #1D 500 ppm sulfur motor vehicle diesel fuel;

(D) #2D 500 ppm sulfur motor vehicle diesel fuel; or

* * * * *

(3) Records that clearly and accurately identify the total volume in gallons of each designated fuel identified under paragraph (b)(1) of this section transferred over each of the compliance periods, and over the periods from June 1, 2006 to the end of each compliance period. The records shall be maintained separately for each fuel designated under paragraph (b)(1) of this section, and for each EPA entity and facility registration number from whom the fuel was received or to whom it was delivered. For batches of fuel received from facilities without an EPA facility registration number, any batches of fuel received marked pursuant to § 80.510(d) or (f) shall be deemed designated as heating oil, any batches of fuel received marked pursuant to § 80.510(e) shall be deemed designated as heating oil or LM diesel fuel, any batches of fuel received on which taxes have been paid pursuant to Section 4082 of the Internal Revenue Code (26 U.S.C. 4082) shall be deemed designated as motor vehicle diesel fuel, any 500 ppm sulfur diesel fuel dyed pursuant to § 80.520(b) and not marked pursuant to § 80.510(d) or (f) shall be deemed designated as NRLM diesel fuel, and any diesel fuel with less than or equal to 500 ppm sulfur which is dyed pursuant to § 80.520(b) and not marked pursuant to § 80.510(e) shall be deemed to be NR diesel fuel.

* * * * *

(i) Additional records that must be kept by mobile facilities. Additional records that must be kept by mobile facilities. Any registered mobile facility must keep records of all contracts from any contracted components (e.g. tank truck, barge, marine tanker, rail car, etc.) in each of its registered mobile facilities.

(j) The records required in this section must be made available to the Administrator or the Administrator's designated representative upon request.

(k) Notwithstanding the provisions of this section, product transfer documents must be maintained under the provisions of §§ 80.590, 80.592, and 80.602.

(l) The records required in this section must be kept for five years after they are required to be collected.

(m) Identifications of fuel designations can be limited to a sub-designation that accurately identifies the fuel and do not need to also include the broader designation. For example, NR diesel fuel does not also need to be designated as NRLM or MVNRLM diesel fuel.

■ 15. Section 80.601 is amended as follows:

■ a. By revising paragraphs (a) introductory text, (a)(1), (a)(2), and (a)(4)(v).

■ b. By revising paragraph (b) introductory text.

■ c. And by revising paragraph (d) introductory text, (d)(1)(i) through (iv), adding paragraphs (d)(1)(v), (d)(1)(vi), and (d)(1)(vii), and revising paragraph (d)(3) to read as follows.

§ 80.601 What are the reporting requirements for purposes of the designate and track provisions?

(a) Quarterly compliance period reports. Beginning February 28, 2007 and continuing through August 31, 2010, each entity required to maintain records under § 80.600 must report the following information separately for each of its facilities to the Administrator as specified in paragraph (d)(1) of this section except as provided in paragraph (e) of this section.

(l) Separately for each fuel designation category specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section and separately for each transferee facility, the total volume in gallons of distillate fuel designated under § 80.598 for which custody was delivered by the reporting facility to any other entity or facility, and the EPA entity and facility registration number(s), as applicable, of the transferee.

(i) Beginning with the first compliance period and continuing up to and including the compliance period that starts April 1, 2007, fuel designated as 15 ppm or 500 ppm motor vehicle diesel fuel.

(ii) Beginning with the compliance period that starts June 1, 2007 and continuing up to and including the final reporting period, all fuel designation categories.

(2) Separately for each designation category specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section and separately for each transferor facility, the total volume in gallons of distillate fuel designated under § 80.598 for which custody was received by the reporting facility, and the EPA entity and facility registration number(s), as applicable, of the transferor.

(i) Beginning with the first compliance period and continuing up to and including the compliance period that starts April 1, 2007, fuel designated as 15 ppm or 500 ppm motor vehicle diesel fuel.

(ii) Beginning with the compliance period that starts June 1, 2007 and continuing up to and including the final reporting period, all fuel designation categories.

* * * * *

(4) * * *

(v) Beginning with the compliance period starting June 1, 2007, the volume balance under § 80.599(c)(2) and § 80.598(b)(9)(viii)(A).

* * * * *

(b) *Annual reports.* Beginning August 31, 2007, all entities required to maintain records for batches of fuel under § 80.600 must report the following information separately for each of its facilities to the Administrator on an annual basis, as specified in paragraph (d)(2) of this section except as provided in paragraph (e) of this section.

* * * * *

(d) *Submission of reports for quarterly and annual compliance periods.*

(1) * * *

(i) The reports for the first and second quarterly compliance periods covering June 1, 2006 to September 30, 2006 and October 1, 2006 to December 31, 2006 respectively shall be submitted by February 28, 2007.

(ii) The reports for the third and fourth quarterly compliance periods covering January 1, 2007 to March 31, 2007 and April 1, 2007 to May 31, 2007 respectively shall be submitted by August 31, 2007.

(iii) The report for the fifth quarterly compliance period covering June 1, 2007 to September 30, 2007 shall be submitted by November 30, 2007.

(iv) The report for the sixth quarterly compliance period covering October 1, 2007 to December 31, 2007 shall be submitted by February 28, 2008.

(v) The reports for the quarterly compliance periods beginning with the first period in 2008 up to and including the first period in 2010 shall be submitted as follows:

(A) The report for the period covering January 1 to March 31 shall be submitted by the following May 31.

(B) The report covering the period covering April 1 to June 30 shall be submitted by the following August 31.

(C) The report for the period from July 1 to September 30 shall be submitted by the following November 30.

(D) The report for the quarterly compliance period from October 1 to December 31 shall be submitted by the following February 28.

(vi) The report for the quarterly compliance period from April 1, 2010 to May 31, 2010 shall be submitted by August 31, 2010.

(vii) The report for the last quarterly compliance period from June 1, 2010 to September 30, 2010 shall be submitted by November 30, 2010.

* * * * *

(3) All reports shall be submitted on forms and following procedures specified by the Administrator, shall include a statement that volumes reported to the Administrator under this section are in substantial agreement to volumes reported to the Internal Revenue Service (and if these volumes are not in substantial agreement, an explanation must be included) and shall be signed and certified by a responsible corporate officer of the reporting entity.

* * * * *

■ 16. Section 80.602 is amended by revising paragraphs (a)(2)(iii), (b) introductory text, (d), and (e), and adding paragraph (f) to read as follows:

§ 80.602 What records must be kept by entities in the NRLM diesel fuel and diesel fuel additive production, importation, and distribution systems?

(a) * * *

(2) * * *

(iii) The results of the tests for sulfur content (including, where applicable, the test results with and without application of the adjustment factor under § 80.580(d)), for cetane index or aromatics content, dye solvent red 164, marker solvent yellow 124 (as applicable), and the volume of product in the storage tank or container from which the sample was taken.

* * * * *

(b) Additional records to be kept by refiners and importers of NRLM diesel fuel. Beginning June 1, 2007, or June 1, 2006, pursuant to the provisions of § 80.535 or § 80.554(d), any refiner producing diesel fuel subject to a sulfur standard under § 80.510, § 80.513, § 80.536, § 80.554, § 80.560, or § 80.561, for each of its refineries, and any importer importing such diesel fuel separately for each facility, shall keep records that include the following information for each batch of NRLM diesel fuel or heating oil produced or imported:

* * * * *

(d) Additional records that must be kept by mobile facilities. Any registered mobile facility must keep records of all contracts from any contracted components (*e.g.* tank truck, barge, marine tanker, rail car, etc.) of each of its registered mobile facilities.

(e) Length of time records must be kept. The records required in this section shall be kept for five years from the date they were created, except that records relating to credit transfers shall be kept by the transferor for five years from the date the credits were transferred, and shall be kept by the transferee for five years from the date the credits were transferred, used or terminated, whichever is later.

(f) Make records available to EPA. On request by EPA, the records required in this section must be made available to the Administrator or the Administrator's representative. For records that are electronically generated or maintained, the equipment and software necessary to read the records shall be made available, or if requested by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator's authorized representative.

[FR Doc. 05–22807 Filed 11–21–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL–7999–7]

Underground Injection Control Program—Revision to the Federal Underground Injection Control Requirements for Class I Municipal Disposal Wells in Florida

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's rule amends the current Federal Underground Injection Control (UIC) requirements by providing a regulatory alternative to owners and operators of Class I municipal disposal wells in specific areas of Florida that have caused or may cause movement of fluid into an Underground Source of Drinking Water (USDW). Because operation of Class I wells with fluid movement into a USDW is prohibited by Federal UIC regulations, this new rule offers owners and operators of municipal disposal wells in certain counties in Florida the ability to continue to operate their wells provided they meet additional wastewater treatment requirements. These new treatment requirements, which apply only to injection operations in certain counties of Florida, are designed to provide an equivalent level of protection to USDWs that is afforded by the no-fluid-movement standard.

DATES: This regulation is effective December 22, 2005. For purposes of judicial review, this final rule is promulgated as of 1 p.m., Eastern time on December 6, 2005, as provided in 40 CFR 23.7.

ADDRESSES: The official public docket for this rule is located at the U.S. Environmental Protection Agency (EPA), Region 4 Library (9th Floor), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960. The docket is available for inspection from 8 a.m. to 3:30 p.m., Eastern time, Monday through Friday, excluding legal holidays. For information on how to access Docket materials, please call (404) 562–8190 and refer to the Florida UIC docket.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Nancy H. Marsh, Ground Water & UIC Section, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303–8960 (phone: 404–562–9450; E-mail: *marsh.nancy@epa.gov*) or Lee Whitehurst, Office of Ground Water and Drinking Water, U.S. EPA, EPA East, 1200 Pennsylvania Avenue, NW.,Washington, DC 20460 (phone: 202–564–3896; E-mail: *whitehurst.lee@epa.gov*). For general information, contact the Safe Drinking Water Hotline, at 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5 p.m., Eastern time.

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I. General Information

A. Who Are Regulated Entities?

This regulation is limited in application to the owners and/or operators of existing Class I underground injection wells that inject domestic wastewater effluent in certain parts of Florida. It is limited geographically to wells in the following counties: Brevard, Broward, Charlotte, Collier, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. These counties are included in this rule because they have the unique geologic conditions that are predominated by carbonate rocks. Such rocks commonly contain fractures, faults, and solution cavities that provide preferential paths for the movement of underground fluids.

Class I injection wells are wells that inject fluids beneath the lowermost formation containing, within one-quarter mile of a well bore, a USDW (40 CFR 144.6(a)). Class I wells can be used to inject hazardous, industrial, or municipal wastes. Class I municipal disposal wells inject treated wastewater from publicly or privately owned and operated facilities that treat domestic wastewater (commonly referred to as sanitary wastewater or sewage), which is principally derived from dwellings, business buildings, and institutions. Treated wastewater from industrial facilities, often controlled through pretreatment standards, may also be found in this wastewater. Currently, Class I municipal disposal wells are located only in the State of Florida. Specific regulated categories and entities include:

Category	Examples of entities
Municipalities and Local Government	Class I municipal disposal wells disposing of domestic wastewater effluent in certain parts of Florida
Private	Class I municipal disposal wells disposing of domestic wastewater effluent in certain parts of Florida.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 146.15 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Abbreviations and Acronyms Used in the Preamble and Final Rule

AWT Advanced Wastewater Treatment
BOD Biochemical Oxygen Demand
CFR Code of Federal Regulations
EPA Environmental Protection Agency
F.A.C. Florida Administrative Code
FDEP Florida Department of Environmental Protection
ICR Information Collection Request
MGD Million Gallons per Day
NDWAC National Drinking Water Advisory Council
NOA Notice of Availability
NODA Notice of Data Availability
NTTAA National Technology Transfer and Advancement Act
O&M Operations and Maintenance
OMB Office of Management and Budget
RCRA Resource Conservation and Recovery Act

RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SDWA Safe Drinking Water Act
TDS Total Dissolved Solids
TSS Total Suspended Solids
USDW Underground Source of Drinking Water
UIC Underground Injection Control
UMRA Unfunded Mandates Reform Act

II. Background

A. Why Is EPA Taking This Regulatory Action?

In the early 1980's EPA found that some Class I municipal wells in specific areas in Florida caused or may cause fluid movement into an Underground Source of Drinking Water (USDW). On July 7, 2000, EPA proposed a revision to the UIC regulations whereby continued injection would be allowed only if owners or operators met certain additional wastewater treatment requirements. EPA requested public comment on options for providing additional wastewater treatment at municipal disposal facilities in certain counties in Florida that have or may cause fluid movement.

As part of EPA's FY 2000 appropriations bill, Congress asked EPA to conduct a relative risk assessment of deep well injection, ocean disposal, surface discharge, and aquifer recharge of treated effluent in South Florida. EPA published the Relative Risk Assessment of Management Options for Treated Wastewater in South Florida in April 2003. In the Relative Risk Assessment, EPA reported that results from ground water monitoring around some Class I municipal disposal wells in Florida confirm that fluids have migrated out of the permitted injection zone and, in some cases, into USDWs. EPA also found that the full extent of USDWs contamination is not known because the fate and transport of pathogens contained in injected effluent is especially difficult to define even with the most sophisticated ground water modeling or monitoring.

On May 5, 2003, EPA issued a Notice of Availability (NOA) announcing the availability of the Relative Risk Assessment and a Notice of Data Availability (NODA), requesting public comment on how the findings in the Relative Risk Assessment should inform this final rulemaking.

Without today's rule, the no-fluid-movement requirement would remain the only available approach for regulating Class I municipal disposal wells in Florida, regardless of the level of wastewater treatment prior to injection. Enforcing this approach would, in effect, require owners and operators to shut these wells down because wastewater isolation from USDWs cannot be ensured. Shutting down the injection wells would, in turn, force the municipal wastewater to be managed by other means, which could increase the risks to surface water and coastal ecosystems.

As an alternative, EPA has chosen, for Class I municipal disposal wells in certain parts of Florida, another approach that it believes will be as effective as confinement in protecting USDWs from the contaminants in the wastewater. This alternate approach involves the rigorous control of the quality of the injected fluids. Under this approach, the movement of fluids into USDWs, whether known or suspected, should not endanger the USDWs because the quality of the wastewater has been treated to a level that is no longer a threat to USDWs. Today's action shifts the endangerment protection strategy employed for Class I municipal disposal wells in certain parts of Florida from the no-fluid-movement standard to an alternate approach that relies on treatment of wastewater before it is injected. This shift, however, does not undercut the protection of USDWs or weaken the UIC Program requirements. Although facility owners and operators in the designated counties must meet new treatment requirements to continue injecting without violating the no-fluid-movement standard, they must also comply with all other applicable UIC requirements to ensure that their injection wells do not endanger USDWs.

In the Relative Risk Assessment's evaluation of injection practices in Florida, pathogens were identified as the contaminant in municipal wastewater that presents the greatest risk to USDWs. High-level disinfection of this municipal wastewater is an effective method for inactivating these pathogens.

Therefore, in today's rule, EPA amends the current Federal UIC regulations to allow owners and operators of Class I municipal disposal wells in specific areas of Florida to continue using their wells, even if they have caused or may have caused movement of fluid into a USDW, provided they meet new requirements to treat their municipal wastewater with pretreatment, secondary treatment, and high-level disinfection.

B. Statutory and Regulatory Framework

Class I underground injection wells are regulated under the authority of Part C of the Safe Drinking Water Act (''SDWA'' or ''the Act'') (42 U.S.C. 300h *et seq.*). The SDWA is designed to protect the quality of drinking water sources in the United States and prescribes that:

> Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons. (Section 1421(d)(2) of the SDWA, 42 U.S.C. 300h(d)(2).)

Part C Protection of Underground Sources of Drinking Water of the Act specifically mandates the regulation of underground injection. The Agency has promulgated a series of UIC regulations under this authority at 40 CFR parts 144 through 147. The chief goal of any Federally approved UIC Program (whether administered by the State or EPA) is the protection of USDWs. This includes not only those aquifers which are presently being used for drinking water, but also those which can reasonably be expected to be used in the future. EPA has established through its UIC regulations that underground aquifers with less than 10,000 mg/l total dissolved solids (TDS) and which contain a sufficient quantity of ground water to supply a public water system are USDWs. (40 CFR 144.3)

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for effective State programs to prevent underground injection that endangers drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR parts 144 and 146, on May 19, 1980 (45 FR 33290), and technical requirements, in 40 CFR part 146, on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146), July 26, 1988 (53 FR 28118), December 3, 1993 (58 FR 63890), June 10, 1994 (59 FR 29958), December 14, 1994 (59 FR 64339), June 29, 1995 (60 FR 33926), December 7, 1999 (64 FR 68546), May 15, 2000 (65 FR 30886), and June 7, 2002 (67 FR 39584). Section 1421(b)(3)(A) of the Act also provides that EPA's UIC regulations shall ''permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.''

When EPA promulgated its UIC regulations, it defined five classes of injection wells in 40 CFR 144.6. Class I wells are defined as wells which inject

fluids beneath the lowermost formation containing, within one-quarter mile of the well bore, a USDW. Class I wells can be hazardous waste or other industrial or municipal disposal wells. (Hazardous waste injection must meet additional Resource Conservation and Recovery Act (RCRA) requirements. See 40 CFR part 148. Class I municipal disposal wells can be owned by public and private entities, as discussed above.

Section 1422 of the Act provides that States may apply to EPA for national primary enforcement responsibility to administer the UIC program. Those States receiving such authority are referred to as ''Primacy States.'' Florida received national primary enforcement responsibility for the UIC program for Class I, III, IV, and V wells on March 9, 1983. UIC regulations specific to Florida's primacy program are established in 40 CFR part 147, Subpart K. For the remainder of this preamble, reference to the UIC Program ''Director'' means the Secretary of the Florida Department of Environmental Protection (FDEP). Currently, all UIC Programs in Indian Country for Florida are directly implemented by EPA. It is EPA's intent that the provisions of this regulation apply to Class I municipal disposal wells in Indian Country within the counties identified in 40 CFR 146.15(f). At this time, there are no known Class I municipal disposal wells in Florida in Indian Country.

C. Requirements To Prevent Fluid Movement

When EPA promulgated its regulations for the UIC program, it established different requirements for each class of wells, based upon the uses and risks of various types of wells. All classes of wells are required to comply with 40 CFR 144.12(a) which states:

> No owner and/or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons.

Then, for Class I, II, and III wells, 40 CFR 144.12(b) more specifically provides that:

> If any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under 40 CFR part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement.

In contrast to subsection (a), which, for all classes of wells, prohibits fluid movement that may endanger USDWs, 40 CFR 144.12(b) requires for Class I, II, and III wells that a State or Federal UIC Program Director, upon detection of contaminant movement into a USDW, prescribe requirements to prevent any such movement, regardless of whether the movement may endanger the USDW.

In addition to 40 CFR 144.12(b), EPA established technical and other requirements for specific classes of wells in Parts 144 and 146 regulations. Parts 144 and 146 regulations address siting, construction, operation, and closure of wells. Parts 144.12(b) and the specific technical requirements of parts 144 and 146 regulate the activities through which fluid movement may result and impose requirements designed to ensure that Class I, II, and III wells will not endanger USDWs by prohibiting movement of any fluid into the USDW.

D. Domestic Wastewater Disposal in Florida Through Class I Wells

Beginning more than 20 years ago, municipalities in Florida began to pursue the use of underground injection as an alternative to surface disposal of treated wastewater from domestic wastewater treatment facilities. Underground injection technology was employed to relieve stress to surface water environments because it was technologically feasible to inject large volumes of wastewater into deep permeable and transmissive formations. Through technical and monetary assistance, EPA supported construction of many of these facilities in an effort to safeguard surface waters. Through injection technology, domestic wastewater facilities have been able to dispose of large quantities of domestic effluent, with the resulting benefit of reducing impacts to surface ecosystems. Wells at facilities that inject domestic wastewater into wells below the lowermost USDW are considered to be Class I municipal disposal wells, and in Florida such wells inject into zones ranging from 650 to 3,500 feet below the land surface.

The volumes of domestic wastewater permitted for injection at Class I municipal disposal well facilities presently range from one well with less than one million gallons per day (MGD) at the Gasparilla Island Water Utilities to 17 wells with about 110 MGD at Miami-Dade Water & Sewer Department, South District Wastewater Treatment Plant. Florida requires that domestic wastewater must, at a minimum, be treated to secondary wastewater treatment standards (see 40 CFR part 133). At the time Florida permitted the currently operating Class I municipal disposal wells, characterization of the geology indicated that there was adequate confinement to isolate the injection fluids from any USDWs. Because it was thought there was adequate confinement, it was believed that injection fluids would never migrate upwards into the shallower geologic formations containing USDWs.

The current injection and confining zones in peninsular Florida exist in what is known as the Floridan Aquifer System. This system is made up of carbonate rocks. The uppermost geologic formations of the Floridan Aquifer System, as well as formations above the Floridan Aquifer, are USDWs. The porosity and permeability variations of the carbonate rocks of peninsular Florida and the existence of fractures within the formation determine their confining ability. The porosity varies greatly, even within the same horizon or geological deposit of a particular time. Monitoring of injection operations over the past several years has indicated that some deep geologic zones provide less confinement between formations than was originally thought.

It now appears, from recent well monitoring data, that upward fluid movement from some Class I municipal disposal operations occurs in Florida because the injection fluid from Class I municipal disposal wells has a lower density (lower TDS) than the native formation fluids. This tends to cause the less dense injection fluids to rise to the top of the injection zone preferentially through fractures that may exist within the formations and above the injection zone if migration pathways, such as fractures, exist. Movement of injected fluid into USDWs either has been confirmed or is suspected at eight facilities, as evidenced by levels of nitrates and ammonia, as well as significant changes in dissolved solids concentrations. (The preferential flow that leads to the movement of fluid with nitrates and ammonia can also lead to the presence of pathogens.) At an additional eight facilities, there is evidence of movement outside of the injection zone, though not into USDWs.

E. July 7, 2000 Proposed Rule

On July 7, 2000, EPA proposed revisions to the UIC regulations that would allow continued wastewater injection by existing Class I municipal disposal wells that have caused or may cause movement of contaminants into USDWs in specific areas of Florida (65

FR 42234). Continued injection would be allowed only if owners or operators met certain additional requirements that provide adequate protection for USDWs. EPA co-proposed two primary options for the additional requirements:

1. Option 1: Advanced Wastewater Treatment (AWT) With a Non-Endangerment Demonstration

The authorization to inject under Option 1 would have required that the owner and/or operator of a Class I municipal disposal well injecting domestic wastewater effluent treat the wastewater by advanced treatment methods and high-level disinfection and demonstrate that injection would not cause fluids that exceed the national primary drinking water regulations or other health-based standards to enter the USDW. The non-endangerment demonstration would focus on any contaminants that still exceed national drinking water regulations or other health-based standards after wastewater treatment. In the proposal, EPA solicited public comment on the appropriateness of this option, as well as the appropriate level of wastewater treatment, nutrient removal, and high-level disinfection that should be required if Option 1 is selected. The alternatives proposed were:

Treatment to 10–24 mg/l biochemical oxygen demand (BOD) with disinfection;

Treatment to 10–24 mg/l BOD with disinfection and nutrient removal;

Treatment to <10 mg/l BOD with disinfection;

Treatment to <10 mg/l BOD with disinfection and nutrient removal.

2. Option 2: In-Depth Hydrogeologic Demonstration and Advanced Treatment, as Necessary

The authorization to inject under Option 2 would have required that the owner and/or operator of a Class I municipal disposal well injecting domestic wastewater effluent provide a hydrogeologic demonstration that the injection operation would not cause the USDW to exceed national primary drinking water regulations or other health-based standards. EPA anticipated that this hydrogeologic demonstration would be an extensive evaluation, similar in detail to those required for a RCRA land ban no-migration petition, and consist of an analysis of the contaminants in wastewater prior to injection, include monitoring data from deep wells at the base of the USDW, and also include detailed hydrogeologic modeling of vertical and horizontal fluid transport in the injection zone and USDWs. If it was anticipated that the fluids may enter the USDW, the demonstration would have to show that the fluids would not cause the USDW to exceed primary drinking water regulations in 40 CFR part 141 or other health-based standards. Operators who could not successfully demonstrate that the injection operation meets these criteria would have been required to treat their injectate to address the contaminants of concern and satisfy additional requirements proposed to be added in a new 40 CFR 146.15(d). This second option also proposed a provision whereby all facilities qualifying for authorization to inject under this option would be required to install advanced wastewater treatment and high-level disinfection by 2015.

EPA proposed to limit the applicability of the rule to existing Class I municipal disposal wells that have caused or may cause fluid movement into USDWs in specific counties and under certain geologic conditions in Florida. The proposed counties were: Brevard, Broward, Charlotte, Collier, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. These counties were targeted in the proposal because they have the unique geologic conditions that are predominated by carbonate rocks discussed previously. The counties were selected using a map adapted from Florida Geological Survey map series 94 ''Potential Subsurface Zones for Liquid-Waste Storage in Florida,'' created by James A. Miller of the United States Geological Survey in 1979. The proposed geological conditions were those where the injection and confining zones are both in the Floridan Aquifer, and no clastic confining unit separates the injection zone from the lowermost USDW. See United States Geological Survey's Web site for specific information on Florida's geology at *http://www.usgs.gov* or at *http://www.dep.state.FL.us/geology/.*

EPA requested comment on a range of issues associated with this proposal, including the following: (1) Should the Agency select Option 1 or 2, or, if it would be more appropriate, select a combination of both options? (2) What is the appropriate level of wastewater treatment, if Option 1 were selected? (3) What is the need to require pretreatment as an additional condition of authorization under the rule, and is it necessary to extend the pretreatment standards presently required by the State to injection facilities with less than 5 MGD? (4) Are owners and operators able to provide the kind of hydrogeologic and other information necessary for a successful hydrogeologic demonstration under Option 2? (5) Is there a need for any additional monitoring requirements for the final rule? (6) Is it appropriate to make the rule applicable only to existing wells (not new wells) and only to the proposed list of counties? (7) Is the Florida geology suitable for domestic wastewater disposal through Class I injection wells?

Following publication of the proposed rule, EPA held a series of public meetings during the comment period. These meetings provided an opportunity for interested parties to submit oral comments on the proposal. Two public meetings were held on August 22, 2000, in Tampa, Florida, and an additional two meetings were held on August 24, 2000, in West Palm Beach, Florida.

The written comments submitted on the proposed rule and the oral comments provided during the public meetings mirror each other. EPA has carefully considered all of these comments and has responded to them in full in the comment response document for the proposal, which is part of the record for this final rule. These comments are also summarized in Section III.A and factored into the Agency's final decisionmaking discussed in Section IV of today's preamble.

F. 2003 Relative Risk Assessment

As noted previously, following the July 7, 2000, proposal, Congress included the following provision as part of EPA's fiscal year 2000 appropriations bill: ''Within available funds, the conferees direct EPA to conduct a relative risk assessment of deep well injection, ocean disposal, surface discharge, and aquifer recharge of treated effluent in South Florida, in close cooperation with the Florida Department of Environmental Protection and South Florida municipal water utilities.'' Because this directive came at a time when EPA's work on the July 7, 2000, proposal was substantially complete, the Agency decided to proceed with the proposal and the relative risk assessment along separate but converging paths. EPA initiated and conducted the relative risk assessment with the intent of using relevant findings from the assessment to inform the final rulemaking. EPA published the Relative Risk Assessment of Management Options for Treated Wastewater in South Florida (EPA 816–R–03–010) in April 2003.

The methodology for the assessment involved a process of investigating the

four very different wastewater disposal options: deep well injection, aquifer recharge, discharge to ocean outfalls, and discharge to other (non-ocean) surface water bodies. Each option has its own specific stressors (hazards), exposure pathways, receptors, and potential effects. Parameters that are relevant to one particular disposal option are not necessarily relevant to the other three. Therefore, a strictly quantitative comparison between the four options was not possible.

Instead, EPA conducted what is termed a relative risk assessment to both assess the risks associated with each disposal method and allow comparisons. Individual risk assessments were completed for each wastewater disposal option and the risks associated with each were characterized. The risks and risk factors identified for each specific disposal option were then evaluated and described. Overall comparisons and conclusions were then presented as relative risk assessment matrices.

The Relative Risk Assessment addresses five key questions specifically related to deep well injection: (1) What level of treatment and disinfection is provided for deep well injection? (2) What stressors remain (after treatment) that may be a concern for deep well injection? (3) What exposure pathways are (or may be) of significance for deep well injection? (4) What is the overall estimate of risk for deep well injection? (5) What are the important data or knowledge gaps for deep well injection? The significant findings of the Relative Risk Assessment pertaining to deep well injection are contained in the report and are summarized below. (See the Relative Risk Assessment document for details on the other disposal options.)

1. Relative Risk Assessment Question 1: What Level of Treatment and Disinfection Is Provided for the Management Options of Treated Wastewater in South Florida?

All facilities that manage municipal wastewater by deep well injection in Florida are required by Florida law to provide at least secondary treatment of the wastewater prior to injection. In addition, utilities that employ deep well injection must maintain, as a contingency, disinfection capability, per F.A.C 62–500.540(1), but many do not disinfect treated effluent prior to injection. For example, treatment of wastewater that is injected by Class I municipal disposal wells in Miami-Dade and Brevard Counties consists of secondary treatment with no disinfection, although backup disinfection capability is required. In contrast, in Pinellas County, wastewater is treated to more stringent reclaimed water standards before being discharged into Class I municipal disposal wells, because the Class I wells are used to dispose of reclaimed water during periods of wet weather. Reclaimed water standards, as specified by the State of Florida, include secondary treatment plus a variety of techniques to remove microorganisms, including filtration and high-level disinfection. Filtration before disinfection serves to increase the ability of the disinfection process to inactivate viruses and other pathogens. Filtration also serves as the primary means for removing protozoa, such as *Cryptosporidium* and *Giardia.*

2. Relative Risk Assessment Question 2: What Stressors Remain (After Treatment) That May Be a Concern for the Management Options of Treated Wastewater in South Florida?

''Stressors'' include chemical or biological agents that may cause adverse effects if exposure levels are high enough. The Relative Risk Assessment describes the human health and ecological health stressors that may be found in wastewater effluent after it has been treated and that may pose a risk.

In cases where injectate has received secondary treatment only, microorganisms are generally not inactivated prior to deep well injection in Florida. When used, disinfection serves to inactivate bacteria and viruses, especially when the wastewater is sufficiently filtered prior to disinfection. Protozoan pathogens (e.g., *Cryptosporidium* and *Giardia*) may still be present if the wastewater is not filtered. Disinfection (or chlorination) byproducts such as trihalomethanes may also be present in some wastewater, although no data are available to suggest that such byproducts are a serious concern for deep well injection or any of the other wastewater management options studied.

Nutrients (e.g., nitrogen and phosphorus) can potentially stimulate the production of algae, which can lead to adverse side effects such as eutrophication, should the stressors reach surface water. Nitrogen is the primary nutrient of concern for Class I injection, because of its mobility in ground water.

3. Relative Risk Assessment Question 3: What Exposure Pathways Are (or May Be) of Significance for the Management Options of Treated Wastewater in South Florida?

An ''exposure pathway'' is the course a stressor takes from a source of release to an exposed organism. It is defined by the different environmental media through which a stressor migrates (e.g., air, surface water, ground water) as well as the mechanism by which an organism is actually exposed (e.g., inhalation, drinking, topical contact).

There are documented impacts to USDWs resulting from deep well injection in Florida, which raise concerns about potential human exposures via the drinking water pathway. Beginning in the late 1980s, ground water monitoring wells at 16 of the 42 municipal facilities that utilize Class I deep well injection in Florida began to detect the movement of fluid outside of the permitted injection zones. As previously mentioned, movement of contamination into USDWs either has been confirmed or is suspected at eight facilities.

There is also the potential for contaminants released by deep well injection to migrate through the subsurface and discharge into marine and/or surface waters, where they could pose risk via other pathways if loadings were sufficiently large. However, the risk assessment concluded that it is unlikely that stressors would migrate from the deep injection zone to surface water.

4. Relative Risk Assessment Question 4: What Is the Overall Estimate of Risk for the Management Options of Treated Wastewater in South Florida?

Although the report does not quantify risks, it offers conclusions about the relative risks of the four wastewater management options studied and about the various factors that influence risks to human and ecological health.

What Is the Human Health Risk?

The human health risks associated with deep well injection (as well as the other three wastewater management options studied in the risk assessment) were found to be generally low. However, the degree of wastewater treatment, and in particular the level of disinfection and filtration of pathogenic microorganisms, is a major risk driver. There is greater potential risk associated with wastewater that is not filtered and then disinfected to inactivate bacteria and viruses, and not filtered to remove protozoan pathogens, such as *Cryptosporidium* and *Giardia.* This suggests higher relative risks for deep well injection operations that do not filter and disinfect wastewater and the risk is highest in situations where the injectate migrates through fractures, and solution cavities. The risk associated with microorganisms being released by deep well injection would be mitigated somewhat in situations where the

injection is dominated by porous media flow, characterized by long travel times to current or potential drinking water sources and fine pore spaces capable of retaining microorganisms.

Once microorganisms and other stressors are released to the environment, the level of risk they pose to human health depends largely on how likely they are to enter drinking water supplies. The Relative Risk Assessment suggests that deep well injection has a higher risk than the other wastewater management options because current UIC regulatory requirements for pathogen removal/inactivation are less stringent.

What Are the Ecological Health Risks?

Overall, the risk to surface water ecosystems is low when treated wastewater is managed by deep well injection. The potential for damage may be higher where treated wastewater is released in proximity to surface water with previously impaired water quality, which is the case for many surface water bodies in Florida. Deep well injection could also pose a risk to marine ecology if contaminants can readily migrate and discharge to offshore waters. Although some uncertainty remains, the potential for this actually to happen in Florida and pose a real threat in the ocean is believed to be unlikely. Two potential ecological effects of particular concern, should surface or ocean waters be sufficiently contaminated, include harmful algal blooms and bioconcentration of toxic contaminants in the food web. Algal blooms can cause a variety of toxic symptoms (including death) in aquatic organisms as well as nontoxic adverse effects such as clogging of gills and smothering of coral reefs and sea grass beds. Food web bioconcentration of metals and other contaminants can also cause a variety of toxic effects.

5. Relative Risk Assessment Question 5: What Are the Important Data or Knowledge Gaps for the Management Options of Treated Wastewater in South Florida?

For all four wastewater management options that were considered in the Relative Risk Assessment, EPA found that there is a lack of definitive studies in Florida that use a physical or chemical tracer or indicator to identify the source and transport pathways of stressors detected in the environment. Without more definitive tracer studies for each wastewater management option, it is difficult to assess the potential effects of local conditions on the fate and transport of treated wastewater after being released into the environment. While results from ground water monitoring around some Class I municipal disposal wells in Florida confirm that fluids have migrated out of the permitted injection zone, the full areal extent of USDW contamination is not known. The unknown degree of migration is not only because of limited availability of monitoring data, but also because the location and connectivity of natural conduits for fluid flow (fractures and solution cavities in underground formations) are difficult to predict. In addition, the rates of microbial survival, inactivation, and transport are difficult to predict. Also uncertain are the rates of microbial straining or filtration by geological materials under different fluid flow scenarios, including porous media and conduit flow. The fate and transport of pathogens is especially difficult to verify for deep well injection, even with the most sophisticated modeling or with expensive monitoring, since the receiving formations are thousands of feet underground.

G. May 5, 2003, Notice of Availability and Notice of Data Availability

On May 5, 2003, EPA issued a Notice of Availability (NOA) (68 FR 23673) announcing the availability of the Relative Risk Assessment and a Notice of Data Availability (NODA) (68 FR 23666), requesting public comment on how the Relative Risk Assessment informs this rulemaking.

Following publication of the NOA and NODA, EPA held a series of public meetings on the Relative Risk Assessment. These meetings, held during the comment period, provided an opportunity for interested parties to submit oral comments on the Relative Risk Assessment. Two public meetings were held, one in West Palm Beach, Florida on June 24, 2003, and a second in Tampa, Florida on June 25, 2003.

The comments provided at the meetings address the same issues as those submitted in writing. EPA has considered the comments provided in the meetings along with the written comments submitted during the comment period following publication of the NODA. The comment response document for the NODA, which is part of the record for this rule, summarizes all of these comments and provides EPA's responses. These comments are also summarized in Section III.A and factored into the Agency's final decisionmaking discussion in Section IV of today's preamble.

In the NODA, EPA summarized the findings of the Relative Risk Assessment, highlighting those that are most relevant findings to informing the final regulatory action, and requested comment on three issues: The appropriate level of wastewater treatment required for continued deep well injection; the feasibility of hydrogeological demonstrations for showing that injection will not cause fluids to enter USDWs; and whether some of the Class I municipal disposal wells in Florida are actually misclassified Class V wells.

1. NODA Question 1: What Is the Appropriate Level of Wastewater Treatment Prior to Injection?

In the NODA, EPA requested comment on an alternative option for defining the appropriate level of wastewater treatment required for continued injection in deep municipal disposal wells in Florida (instead of the four options included in the July 7, 2000, proposal, as listed in Section II.D above). Based on comments received on the proposed rule related to wastewater treatment, as well as findings from the Relative Risk Assessment, the NODA solicited comments on prescribing wastewater treatment requirements that conform with relevant State requirements. Under this alternative, the Agency would simply adopt, in lieu of the standards considered in the proposal, the Florida standards in Rule 62–610.460, F.A.C. (for waste treatment and disinfection applicable to reclaimed water that may come into contact with people) or the standards in Rule 62–600.540(2), F.A.C. (for ground water disposal by underground injection in Class V wells) and Rule 62–600.440(5), F.A.C. (for design and operational criteria for high-level disinfection). Specifically, EPA would require wastewater treatment that results in injected water meeting, at a minimum, secondary treatment and high-level disinfection as defined in the Florida regulations. Also, filtration would be required for total suspended solids (TSS) control prior to disinfection, which would specify that the treated wastewater not contain more than 5.0 mg/l of TSS before the application of the disinfectant. As discussed in the NODA, EPA believes that this treatment standard might offer some important advantages over the alternatives proposed on July 7, 2000. In particular, it might better address the risks associated with pathogens and it would be consistent with the standards already adopted and implemented in Florida for reclaimed water and wastewater disposed through Class V injection wells, which are part of domestic wastewater treatment systems.

In the NODA, EPA asked commenters whether this standard for advanced

treatment and high-level disinfection should be specified in the final rule. EPA also requested that commenters describe the type of treatment that would be necessary to achieve the performance standards (i.e., national primary drinking water regulations and other health-based standards) and provide any information they have on the costs of this option.

2. NODA Question 2: Is It Feasible To Predict Movement of Fluids Through Hydrogeologic Demonstrations?

In the NODA, EPA requested comment on whether the findings from the Relative Risk Assessment regarding deep well injection suggest anything about the practicability and feasibility of the approach outlined under Option 2 in the July 7, 2000, proposal. As summarized above, Option 2 would allow owners and operators to conduct hydrogeologic demonstrations to show that injection will not cause fluids that exceed any national primary drinking water regulations or other health-based standards to enter any USDW.

Based on the added findings in the Relative Risk Assessment regarding the Florida geology, EPA posed several questions in the NODA related to the uncertainties of hydrogeologic demonstrations that would be required under Option 2. In particular, EPA asked whether facilities should be granted the opportunity to conduct the demonstrations; how the UIC Program Director should address anticipated technical difficulties in his/her review of a demonstration; and how a satisfactory hydrogeological demonstration would be conducted.

3. NODA Question 3: Have Some Deep Wells Been Misclassified as Class I, When They Are Actually Class V?

Given the extent of fluid movement documented at some sites, as well as information concerning the geology and the construction of some municipal disposal wells in Florida, it is possible that some wells may have been misclassified as Class I, when they are actually Class V. According to the Federal UIC regulations, Class I wells ''inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water'' (40 CFR 144.6(a)(2)). Class V wells are defined as wells that are not included in Class I, II, III, or IV. Typically, Class V wells release nonhazardous fluids into or above formations containing USDWs.

Separate from the issue of how Class I and Class V wells are defined, the Federal Class I and Class V UIC programs differ in their basic approach to protecting USDWs. As previously described in Section II.B, the basic standard of protection in the Class I program is to ensure that there is no movement of any contaminant into USDWs. This standard is achieved through a Class I regulatory program that focuses on the development and enforcement of stringent permit requirements, including, but not limited to, criteria for well siting, construction, and operation and maintenance. A key component of the Class I program is ensuring that adequate confinement exists between the permitted injection zone and USDWs at a given site.

Since most Class V wells release fluids either directly into or above USDWs, they by definition cause the movement of fluid, which may contain contaminants, into or above USDWs. Therefore, the basic standard of protection in the Class V program is to prevent any contaminants in the fluid from endangering USDWs. Protection efforts in the Class V program mainly focus on regulating and monitoring injectate quality to ensure that the movement of injected fluid will not contain any contaminants that may endanger USDWs. This standard is achieved through inventory and assessment requirements, additional reporting requirements, closure requirements, and other requirements (possibly including permitting requirements) believed by UIC Program staff to be necessary to protect drinking water supplies.

Information collected for the Relative Risk Assessment raises a question as to whether certain Florida municipal disposal wells should have been classified as Class V at the time they were first permitted. In particular, all of the lithologic units of the upper Floridan Aquifer in Pinellas County and the lower Floridan Aquifer in Miami-Dade consist of limestone and dolomite that have shown evidence of solution cavities and fractures. These natural conduits for fluid flow raise a question as to whether lithologic units in these aquifers are effective confining layers and whether the injection zones and overlying USDWs are in different and distinct formations, as they were believed to be when the wells were originally sited, constructed, and permitted as Class I wells.

Based on this information, the NODA requested comment on whether the findings from the Relative Risk Assessment suggest that some Florida wells may have been misclassified as Class I wells. EPA also asked whether the findings suggest that some wells in Florida may, in fact, discharge directly to (and not below) formations containing a USDW, and if the findings suggest that this misclassification should be accepted for the entire group of Florida municipal disposal wells, or only a subset.

III. Summary of Public Comments

A. Comments on the July 7, 2000, Proposed Rule

EPA received 1,181 comments in response to the proposed rule. The following sections summarize the more significant public comments on the seven main issues raised in the proposal. These comments are addressed in more detail in the comment response document available for review in the Florida UIC docket as well as in Section IV of today's preamble.

1. Selection of Option 1, Option 2, or a Combination of Both

In the proposal, EPA solicited comment on whether to select Option 1 (advanced wastewater treatment (AWT) with a non-endangerment demonstration), Option 2 (in-depth hydrogeologic demonstration and advanced treatment, as necessary), or a combination of both options.

Commenters who favor Option 1 explained that, although initially more costly, this option offers the advantage of allowing identification and avoidance of potential drinking water contamination, which would be more cost-effective than ground water remediation. One commenter offered that Option 1 should be required only if needed to meet the non-endangerment requirement. A commenter opposed to Option 1 said that even with AWT, the proposed requirements may not prevent violations of drinking water standards in USDWs.

Those commenters favoring Option 2 argued that it would be burdensome to require utilities to employ AWT immediately. They therefore suggested that AWT either should not be required at all or should be phased-in. One commenter opposing Option 2 said that facilities already perform analyses to demonstrate compliance, and geochemical modeling should be required only where actual data are not available. Another commenter opposing Option 2 said that it is unclear what geochemical modeling would accomplish.

2. Appropriate Level of Wastewater Treatment

In the proposed rule, EPA requested comment on which treatment alternative to specify in the final rule, if Option 1 were selected. Comments were

solicited on the appropriate level of BOD treatment and the need for disinfection and nutrient removal.

Commenters who favored higher levels of BOD treatment (to less than 10 mg/l) asserted that these standards would protect the environment and can be met with available cost-effective technologies. Commenters opposed to requiring BOD treatment said that it is not possible to meet the disinfection requirement with BOD levels of 10 to 24 mg/l, or that there is no technical basis for requiring those levels, since the treated wastewater is being discharged to an anaerobic environment without plant life.

Commenters who supported nutrient removal requirements said that such treatment would have environmental benefits, including protecting wetlands and endangered species. Commenters who opposed nutrient removal explained that it could adversely impact water reuse programs. These commenters also opposed setting phosphorus limitations, saying that there are no human health benefits associated with phosphorus removal.

Commenters who favored requiring AWT said that injected fluids can move into surficial aquifers or near shore surface waters, and AWT is thus needed to protect aquatic species. Commenters opposed to requiring AWT asserted that imposing health-based standards as discharge requirements is inconsistent with the SDWA and not supported by scientific data. These commenters added that injection provides effective source separation that has protected water supplies for many years and that requiring AWT would jeopardize the viability of this practice going forward. Other commenters thought that AWT is insufficient to prevent endangerment of USDWs. These commenters expressed concern that the proposal does not adequately protect USDWs from many of the substances that may be found in municipal wastewater.

3. Need for Pretreatment

EPA solicited public comment on the need for pretreatment as an additional condition of the authorization to inject, and on whether to extend the pretreatment requirements presently required by the State of Florida to injection facilities with flows of less than 5 MGD.

Commenters advocating pretreatment requirements suggested that requiring industrial users to pretreat their wastewater would reduce the chance of contaminating USDWs and reduce the costs to municipal treatment works. Several commenters advocated extending pretreatment requirements to facilities with flows of less than 5 MGD.

Commenters opposed to the pretreatment requirements cited concerns about the ineffectiveness of pretreatment programs to prevent fluid movement or protect public health.

4. Feasibility of Hydrogeologic Demonstrations To Predict Movement of Fluids

EPA solicited comment on the ability of injection well owners and operators to provide the kind of hydrogeologic and other information necessary for a successful hydrogeologic demonstration that their injectate will not cause a USDW to exceed any primary drinking water regulations or other health-based standards.

Commenters opposed to the proposed hydrogeologic demonstrations asserted that they could not accurately reflect flow responses after prolonged injection, and that EPA should not rely on them to protect USDWs. These commenters cited limitations in available knowledge of the subsurface geology of Florida and the fate of contaminants.

5. Monitoring Requirements

EPA requested comments on the proposed monitoring requirements (which would include, at a minimum, effluent monitoring and an analysis of any such contaminants following injection), and asked whether any additional monitoring requirements should be included in the final rule.

Some commenters challenged the proposed monitoring requirements, claiming that they are not adequate to prevent endangerment of ground water quality. Two commenters suggested a need to monitor for pathogens, viruses, and pharmaceuticals. Several commenters requested an increased monitoring frequency, believing that annual monitoring is insufficient to characterize the injected fluids.

Many commenters requested that EPA clarify certain aspects of the proposed monitoring requirements, including what is meant by ''other health-based standards.''

6. Rule Applicability

EPA requested comment on whether the rule should apply to existing wells only or also to new wells. Some commenters suggested that the rule apply to new and existing wells, as well as to replacement wells, and recommended that the rule apply in all counties where fluid migration could or does occur. Those commenters who opposed applying the rule to facilities that have not shown movement of fluid to USDWs expressed concern that such an approach would limit the future application of injection as a disposal technology.

In the proposal, EPA also requested comment on whether any additional (or fewer) counties in Florida should be included within the scope of the rule. No comments requesting the addition or removal of any counties were received.

7. Suitability of Florida Geology for Domestic Wastewater Disposal Through Class I Wells

Commenters provided information and background on the geology of Florida, fluid migration, and the appropriateness of wastewater injection in Florida.

Some commenters expressed concern about injection operations contaminating drinking water aquifers with a virus or pathogen, citing evidence that effluent is leaking into the Floridan Aquifer that is hydrogeologically connected to the Biscayne Aquifer, the sole source of Miami-Dade's drinking water. These commenters said that there are many unknowns about the geology of Florida and that the behavior of injected fluids cannot be accurately predicted.

Other commenters asserted that injection is a safe practice that has been taking place in Florida for decades without any documented adverse impacts to USDWs. They indicated that the injected fluid is ''freshening'' the highly saline receiving waters, and that the availability of injection as a disposal alternative has resulted in significant improvements to surface water quality in Florida. Some commenters added that, in the proposal, EPA did not adequately characterize the subsurface geology in Florida. Some commenters recognized that fluid movement is occurring, but support a rule that allows fluid movement if it is accompanied by a non-endangerment policy. These commenters added that a strict no movement policy would eliminate all injection and supply wells in the region.

B. Comments on the Notice of Data Availability and the Relative Risk Assessment

EPA received 203 comments in response to the NODA and its summary of the Relative Risk Assessment. The paragraphs below summarize the more significant comments on the three main issues raised in the NODA. The complete comment response document available for review in the Florida UIC docket addresses these comments in more detail.

1. Appropriate Level of Wastewater Treatment Prior to Injection

In the NODA, EPA asked for comment regarding the level to which wastewater should be treated before it is injected into deep wells that have caused or may cause fluid movement into a USDW. Some commenters advocated requiring treatment to drinking water standards before injection, citing concerns about pathogens migrating to aquifers and the inability of modeling to identify all pathways by which contamination could occur. Some commenters also expressed concern about the potential migration of viruses, pathogenic bacteria, and protozoa. They asserted that data show that injected fluids are migrating and, without disinfection, pathogens may survive, especially where the travel times to USDWs are short.

Some commenters advocated requiring denitrification as well. Commenters opposed to requiring advanced wastewater treatment said that current treatment requirements are adequate, and that the cost of requiring AWT all the time would be excessive. Some commenters cautioned against a ''one-size-fits-all'' approach, and suggested including case-by-case treatment requirements in permits. They added that, at most facilities, drinking water standards are already met within the aquifer and that, given the salinity of the injection zone, any water from the USDW would require reverse osmosis treatment before it is usable for drinking.

EPA also asked commenters whether treatment consistent with corresponding Florida requirements (i.e., treatment that meets the State's secondary treatment and high-level disinfection standards) is appropriate. Some commenters advocated requiring AWT in accordance with Florida's standards. Other commenters said that Florida sets differing standards based on the quality of the receiving waters, and that simply adopting the Florida standard would not resolve the issue where fluid migration is occurring.

2. Feasibility of Hydrogeologic Demonstrations To Predict Movement of Fluids

As previously described in Section II.F.2, the NODA requested comment on the practicality and feasibility of allowing facilities to conduct hydrogeologic demonstrations, given the inherent difficulties and uncertainties regarding the extent, location, and connectivity of possible natural conduits for flow identified in the Relative Risk Assessment.

Commenters who advocated the use of hydrogeological demonstrations said that such demonstrations would provide utilities needed flexibility, given the hydrogeologic variability in Florida. They added that this approach would be in line with the intent of Congress and the SDWA. These commenters added that monitoring shows that contaminants are not moving into USDWs, and that the critical point to consider is whether the USDW is endangered (rather than just that fluids are moving into USDWs).

Commenters who opposed allowing facilities to conduct hydrogeologic demonstrations said that monitoring programs cannot adequately characterize fluid movement in the subsurface, especially given the faulted and fractured geology of Florida.

Other commenters agreed that hydrogeological demonstrations should be conducted to understand the geology of the injection zone, but said that treatment should be required as well.

3. Class I or Class V

EPA solicited comment on ways to address the fluid movement that has occurred, while preventing the endangerment of USDWs. Specifically, EPA asked for comment on whether wells with fluid movement should be reclassified as Class V wells, or whether Class I or Class V requirements specific to Florida should be promulgated.

Commenters who advocated reclassifying the wells as Class V said that the injection and confining layers are sufficiently similar to be considered a single formation. These commenters were against ''blanket'' reclassification of the wells, however, saying that each well should be considered individually.

Other commenters, who were against reclassifying the wells as Class V, cited concerns that doing so would lead to greater reliance on injection as a wastewater disposal method. They asserted that some injected fluid is migrating to and impacting coral reefs, the wells are in violation of SDWA requirements, and the level of treatment specified will not protect USDWs. These commenters expressed doubt whether, given the existence of natural conduits connecting subsurface layers, the upper layer is sufficiently confining injected wastewater. They added that two subsurface layers sharing certain characteristics do not constitute a single formation.

IV. Explanation of Today's Action

This section describes today's action. It also discusses how EPA considered information in the Relative Risk Assessment and the NODA, as well as public comments received on each of these documents.

A. Objectives and Approach

Under Section 1421 of the Act, UIC regulations must prevent underground injection that endangers drinking water sources. While EPA met this statutory requirement in the past by prohibiting fluid movement, the Act authorizes other approaches as well, such as the approach used in today's rule, which requires treatment of wastewater prior to injection. The overriding objective of today's action is to ensure the protection of USDWs, which is the chief goal of the Federal UIC Program. In so doing, it is important that the rule: (1) Not undercut or unnecessarily burden the Florida UIC Program as it pertains to Class I municipal disposal wells; and (2) not transfer potential problems to other programs or increase concerns associated with the management of treated municipal wastewater by other practices, including aquifer recharge, surface water discharge, and ocean disposal.

In order to meet this last objective, EPA has concluded that it is important to maintain underground injection as a viable alternative for managing treated municipal wastewater in Florida. There are eight instances of known or suspected contamination of USDWs caused by Class I municipal disposal wells, but the Relative Risk Assessment has shown that the overall risks associated with such underground injection are low. The factors on which this determination of ''low risk'' was based include: The quality of the treated wastewater and the contaminants that are found in wastewater; the reduction in certain contaminants provided by secondary and, for some facilities, advanced treatment; the estimated time of travel for wastewater to move vertically to USDWs; and the anticipated reduction in contaminant concentration that occurs in the deep underground environment.

In comparison, the other wastewater management options EPA assessed in the Relative Risk Assessment do not offer clear environmental advantages and are more expensive than underground injection. The Relative Risk Assessment found that the other wastewater management options each pose specific (yet low) risks to human health and the environment that do not necessarily make them preferable to underground injection. For example, disposal of secondary treated wastewater into surface water or the ocean, rather than deep injection, carries nutrients that feed algae blooms that, in turn, can deplete the oxygen

necessary for plant life. Fish need plants for food to live. To limit these nutrients in critical surface water areas (such as Tampa Bay), municipalities are required to provide advanced wastewater treatment with nutrient removal, which is more expensive than underground injection, even when the effluent is treated by high-level disinfection. It is also important to note that, while ocean outfalls have not been prohibited by Florida statute or regulation, no new outfalls have been approved and constructed for more than 15 years. Therefore, it is questionable whether additional ocean disposal would even be an option, if injection were no longer allowed.

In order to continue to allow underground injection, the question becomes how to allow it and, at the same time, ensure the protection of USDWs. There are two basic approaches within the UIC Program for doing this. The first approach, which is currently employed for all Class I, II, and III wells, is to ensure that injected fluids are confined and isolated from USDWs. This approach is based on the premise that the quality of the injected fluids is poor and the movement of such fluids into a USDW is likely to endanger its use. To implement this approach, the standard of protection for Class I, II, and III wells is to prevent any movement of fluid into a USDW, as summarized in Section II.B of this preamble.

In the absence of today's rule, the requirement for no fluid movement would remain the basic approach for regulating Class I municipal disposal wells and be the requirement that owner/operators would have to meet in order to remain in operation. Enforcing this approach would, in effect, require these wells to shut down, because isolation from USDWs cannot be ensured due to the Florida geology and available monitoring data at some sites as described above. Shutting down the injection wells would in turn force the municipal wastewater to be managed by other means, which would not provide any net environmental benefits, would increase the risks to surface water and coastal ecosystems, and would increase treatment and other costs to owners and operators of domestic wastewater treatment facilities. The Relative Risk Assessment found that the other wastewater management options, including underground injection, pose a low risk to human health and the environment. Shutting down the wells would result in a different, but not necessarily better, alternative. All of this, in EPA's view, provides a compelling argument for an alternate approach.

The alternate approach, which is used when adequate confinement between the permitted injection zone and USDWs cannot be assured, is the rigorous control of the quality of the injected fluids. Under this approach, movement of fluids into USDWs is known or suspected, but that movement should not endanger the USDWs because the quality of the injectate is not a concern. This is the basic approach employed by EPA and the States for Class V wells, most of which release fluids into or above USDWs. Today's rule adopts a similar approach that relies on an appropriate level of wastewater treatment prior to injection in order to assure the protection of USDWs. While changing to this approach does represent a shift in the form of the controls employed for certain Class I municipal disposal wells in certain parts of Florida, it is not undercutting protection of USDWs, weakening the UIC Program requirements, or introducing a new standard. To the contrary, it is simply taking a standard approach long used in the UIC Program and applying it to this narrow category of Class I wells as a way to prevent endangerment where the existing regulations do not offer any flexibility.

Today's rule, therefore, provides a regulatory alternative to owners and operators of Class I municipal disposal wells in specific areas of Florida that have caused or may cause unauthorized movement of fluid into a USDW. Because operation of such wells is prohibited by existing Federal UIC regulations, the new rule offers owners and operators the ability to continue to operate their wells, provided they meet requirements to protect USDWs by treating their waste according to these requirements.

B. Operating Requirements

Today's rule provides owners and operators of Class I municipal disposal wells in certain counties of Florida whose injection has caused or may cause the movement of fluids into a USDW the option to (1) develop and implement a pretreatment program that is no less stringent than the requirements of Chapter 62–625, F.A.C. or demonstrates that they have no significant industrial users as defined in Chapter 62–625, F.A.C., and (2) treat the injected wastewater using secondary treatment in a manner that is no less stringent than the requirements of Florida Rule 62–600.420(1)(d), and use high-level disinfection in a manner that is no less stringent than the requirements of Florida Rule 62–600.440(5)(a)–(f). To continue injecting, owners and operators of facilities that have caused or may cause fluid movement into a USDW will have five years from the effective date of this rule to install the required treatment; these owners and operators have already been notified by the UIC Program Director that their injection wells have caused or may cause fluid movement into USDWs. If, at a later time, the Director determines that other Class I municipal disposal wells in the targeted areas of Florida have caused or may cause movement of fluids into USDWs, owners and operators of those wells will be so notified by the Director and will have five years from the date of that notification to install high-level disinfection. See new 40 CFR 146.15(d)(2). During the time between such notification and the time high-level disinfection becomes operational at these facilities, the Director has the authority to require additional operating requirements on a site-specific basis in order to protect USDWs.

These new provisions comprise Option 1 from the July 7, 2000, proposed rule as refined by the alternative treatment standard proposed in the May 5, 2003, NODA. Option 1 of the proposed rule proposed additional treatment, beyond secondary treatment, in the form of four suboptions. All four suboptions proposed high-level disinfection with advanced treatment as defined by two levels of BOD reduction with and without nutrient removal. The alternative treatment level in the NODA, like all of the suboptions in the proposed rule, also called for high-level disinfection. However, the alternative treatment level in the NODA called for high-level disinfection as it is currently prescribed by the State, which includes a reduction in TSS levels to 5 ppm. This TSS level is substantially equivalent to the two suboptions in the proposed rule that called for high-level disinfection and advanced treatment defined by reduction in BOD to less than 10 ppm. In selecting this option for high-level disinfection, as first prescribed in Option 1 of the proposed rule and refined in the NODA, EPA agrees with commenters who recommended that EPA require additional or enhanced treatment because of concerns for insufficient confinement, as well as uncertainties regarding the areal extent of movement of injected wastewater in the subsurface. The selected approach, therefore, requires an additional or enhanced level of treatment that will provide an effluent quality that would not endanger USDWs. As discussed in the preceding section of this preamble, an approach that focuses on effluent

quality is a standard approach used in the Federal UIC program when adequate confinement cannot be assured.

The final operating requirements, however, do not call for the non-endangerment demonstration that was included within Option 1 of the July 7, 2000, proposal. As envisioned in the proposal, this non-endangerment demonstration would have focused on any contaminants that still exceed national drinking water regulations or other health-based standards after advanced wastewater treatment. However, the proposal did not rigorously define the level of advanced treatment that would be required, instead the proposal states that ''advanced treatment is any level of treatment in excess of secondary treatment'' (65 FR 42239, July 7, 2000). At the same time, the four alternative treatment standards proposed as part of Option 1 provided numerical criteria for BOD removal, but did not provide any criteria or other specific details to define the required level of ''disinfection.'' By adopting the definition of ''high-level disinfection'' from the Florida regulations, today's final rule imposes a specific and widely accepted standard for ensuring the removal of microorganisms, which the Relative Risk Assessment (completed after the proposal) now shows are the primary contaminants of concern. As a result, EPA does not believe that the final rule needs to require a non-endangerment demonstration focusing on contaminants after treatment. EPA is confident that the problem will be adequately solved by the treatment itself. Instead, the Florida UIC Program Director is left with the flexibility that he or she currently has to require such a demonstration, or any other measure deemed necessary, to protect USDWs on a case-by-case basis.

The following subsections provide additional discussion of two key aspects of these final operating requirements. The first discusses the selected requirement for pretreatment, secondary treatment, and high-level disinfection, including the rationale for adopting the Florida standard; the rationale for not requiring the removal of BOD, nutrients, or other contaminants besides microorganisms; and the rationale for phasing in the new treatment over time. The second subsection elaborates on EPA's rationale for not adopting the hydrogeologic demonstration approach discussed in the proposal and NODA.

1. Selected Approach

The following sections outline EPA's rationale for the specific requirements in today's rule, including requiring pretreatment, secondary treatment, and high-level disinfection, as well as the rationale for not requiring the removal of other contaminants and why the new treatment will be phased in over time.

a. Rationale for Requiring Pretreatment of Wastewater. Today's rule includes requirements for owners and operators of facilities that wish to be covered by the alternative endangerment standard to comply with existing pretreatment requirements for those facilities. EPA found that almost all (14 of the 16) facilities that have caused or may cause fluid movement into a USDW already have pretreatment programs in place, and the remaining two facilities have conducted surveys indicating that they are not handling waste streams from significant industrial users. EPA believes that existing pretreatment programs at the affected facilities are adequate and necessary to ensure that a variety of contaminants that might appear in wastewater do not endanger USDWs.

EPA agrees with commenters who suggested that requiring industrial users to pretreat their wastewater would reduce the chance of contaminating USDWs and reduce the costs to municipal treatment works. EPA also agrees with several commenters who advocated extending pretreatment requirements to facilities with flows of less than 5 MGD. EPA disagrees with commenters who opposed the pretreatment requirements, and who cited concerns about the ineffectiveness of pretreatment programs to prevent fluid movement or protect public health. EPA believes that it is important for significant industrial users to pretreat their wastewater to remove those contaminants that would not be consistently removed by a municipal wastewater treatment facility before they are injected.

Therefore, today's rule requires that owners and operators develop and implement a pretreatment program that is no less stringent than the State's requirements in Florida Rule 62–625, unless they have no significant industrial users as defined in that chapter, if they wish to avail themselves of the alternative endangerment standard. The State developed these pretreatment requirements to ensure that contaminants are prevented from endangering the public. EPA is adopting pretreatment provisions consistent with those requirements under the authority of the SDWA to prevent contaminants from endangering USDWs.

b. Rationale for Requiring Secondary Treatment of Wastewater. Florida currently requires Class I municipal wastewater facilities to apply secondary treatment prior to injection, and this requirement will stay in place regardless of the addition of the high-level disinfection requirement. Applying secondary treatment, which requires BOD reduction to 25 ppm and TSS reduction to 30 ppm, is necessary for high-level disinfection to work. Without significant reduction in suspended solids that is first achieved by secondary treatment and is further addressed by filtration, the standards for compliance with the high-level disinfection standard of 5 ppm of total suspended solids in this rule could not be achieved.

EPA's July 2000 proposed rule assumed that domestic wastewater effluent injected into Class I municipal disposal wells would have been subject to secondary treatment. See new 40 CFR 146.15(c)(3). Although some commenters expressed opposition to the options for advanced treatment proposed, no commenters expressed opposition to secondary treatment. Since the State already requires secondary treatment, and all Class I municipal well facilities provide secondary treatment, no facilities would need to upgrade their plants to meet this requirement.

c. Rationale for Using the Florida Definition of High-Level Disinfection. The record supporting this rule—including available monitoring data, the Relative Risk Assessment, and public comments—provides compelling evidence that additional wastewater treatment to remove pathogenic microorganisms is needed to ensure that continued Class I municipal disposal in certain parts of Florida does not endanger USDWs. EPA agrees with concerns expressed by many commenters that the quality of secondary-treated wastewater poses a threat to USDWs in certain parts of Florida in light of information that injected fluid at some sites is not being confined to the injection zone. In particular, pathogens may remain in wastewater following secondary treatment and can threaten USDWs if injected in certain parts of Florida. As found in the Relative Risk Assessment, the degree to which pathogenic microorganisms are removed by wastewater treatment is the main factor determining the risk associated with injection.

The Relative Risk Assessment identified pathogens as being of concern not only because of their high concentration in secondary-treated wastewater, but also because of uncertainties associated with fluid movement and their fate within the subsurface of certain parts of Florida.

EPA acknowledges, as noted by some commenters, that there will be some level of pathogen die-off in the deep subsurface and that a shallow confining system may serve as a barrier to the movement of contamination in some locations. However, EPA believes that there is incomplete information about the movement and fate of pathogens in the subsurface. This lack of information prevents EPA from concluding that pathogen die-off is sufficient to protect USDWs in the areas of Florida targeted by today's rule.

Based on these concerns, EPA has determined that owners and operators of Class I municipal disposal wells in specific areas of Florida must provide high-level disinfection if their injection has caused or may cause fluid movement into a USDW. EPA has decided to adopt Florida's definition of high-level disinfection in today's rule because it effectively addresses the risk of pathogens better than any of the other proposed alternatives. It also offers the important advantage of being consistent with the standards already adopted and implemented in Florida, thereby eliminating any confusion or disruption to existing programs.

The specific definition of high-level disinfection, as detailed in Florida Rule 62–600.440(5)(a)–(f), includes requirements to: (1) Reduce total suspended solids to 5.0 mg/l or less before the application of the disinfectant to maximize disinfection effectiveness which, (2) result in an effluent with fecal coliform values that are below detectable levels in 75 percent of the samples, and that are never above 25 organisms per 100 ml in any one sample; and (3) where chlorine is used for disinfection, assure rapid and uniform mixing with a minimum dose of 1 mg/l of free chlorine for a minimum contact time of 15 minutes. EPA is confident that requiring high-level disinfection, defined in this way (no less stringent than Florida Rule 62–600.440(5)(a)–(f)), will satisfactorily address the risk associated with microbial pathogens released by Class I injection wells in the targeted areas of Florida. Viruses and bacteria will be inactivated through high-level disinfection, the effectiveness of which is ensured by operational criteria (i.e., fecal coliform limits) and the requirement to filter the wastewater beforehand. Filtration is also the accepted method for the removal of protozoa (e.g., Cryptosporidium and Giardia).

The State of Florida found, after significant public comment and evaluation by the State Department of Health, that high-level disinfection thus defined will significantly address pathogens and reduce the chance of waterborne disease. For this reason, the State allows wastewater that has been treated by high-level disinfection to be reclaimed for reuse purposes where the public has access, such as watering lawns and golf courses. In addition, Florida requires domestic wastewater systems to use high-level disinfection when they discharge effluent above or directly into USDWs using Class V wells or when they discharge to certain surface waters, such as Tampa Bay. It is important to note, however, that these standards for high-level disinfection are not equivalent to the standards that apply to drinking water. Florida requires that valves and outlets that use reclaimed water be painted purple and labeled with ''Do Not Drink'' warning signs. Reclaimed water and water injected into Class I wells that meet the standards of today's rule will have the same water quality resulting from pretreatment, secondary treatment, filtration and high-level disinfection to ensure that they will not endanger USDWs.

In contrast to the standards for high-level disinfection, Florida also has standards for basic disinfection and intermediate disinfection, which EPA believes are not appropriate for today's rule. The State requires basic disinfection for certain surface water discharge and offshore ocean disposal, or for reclaimed wastewater used for other purposes where the public will not be exposed, such as cooling water use. Basic disinfection does not limit the quantity of TSS in the effluent and requires half the chlorine dose of high-level disinfection. Facilities that provide basic disinfection must be designed to result in a fecal coliform value of not more than 200 organisms per 100 ml.

Facilities that use intermediate disinfection must be designed for rapid and uniform mixing of chlorine with a minimum dose of 1 mg/l free of chlorine for a minimum contact time of 15 minutes, as with high-level disinfection. However, no TSS limitations are set, so the facilities avoid the expense of filtration. Facilities that provide intermediate disinfection must be designed to result in not more than 14 fecal coliform values per 100 ml. In contrast, high-level disinfection treatment facilities are designed to result in zero fecal coliform values per 100 ml. Intermediate disinfection is used in a few ''middle-ground'' instances where public access is restricted but could possibly occur; high-level disinfection is required where there is public access; and basic disinfection is allowed where public access is clearly restricted. One such instance is discharge to wetlands where public access is restricted.

EPA is adopting the State's standard for high-level disinfection rather than basic or intermediate disinfection because high-level disinfection is more appropriate for effluent injected into wells that have caused or may cause fluid movement into a USDW. Such a standard applied to effluent that moves into a USDW from below is consistent with standards the State applies to effluent that is released into or above USDWs by Class V wells. Florida's definitions and standards for basic disinfection and intermediate disinfection were established by the State to apply to situations where wastewater would be isolated and not come in contact with humans. The State anticipated the possibility that humans could inadvertently come into contact with water that has achieved high-level disinfection despite warnings. The reclaimed wastewater is not intended for regular ingestion by the population and thus does not require that level of advanced treatment needed to meet drinking water standards prior to discharge. EPA believes that the injection scenario is similar to use of reclaimed water in that, because of the depths at which wastewater is injected, the possibility of inadvertent human ingestion prior to additional treatment is remote.

However, the lack of control over the movement of fluids into USDWs in certain parts of Florida and the uncertainties about the location, concentration, and survivability of waterborne pathogens injected in those areas call for the degree of disinfection and filtration that is defined by high-level disinfection. As noted above, without the filtration that goes with high-level disinfection, there is no assurance that the treatment would effectively remove pathogenic protozoa, such as Cryptosporidium and Giardia.

d. Rationale for Not Requiring the Removal of Other Contaminants. Although pretreatment, secondary treatment, and high-level disinfection will remove many contaminants that may be present in municipal wastewater, EPA agrees with commenters who said that a large variety of contaminants, such as pharmaceutical products and disinfection byproducts, that may be present in treated municipal wastewater, may not be removed.

Today's final rule does not specifically require all affected facilities to install treatment to remove these other contaminants for four main reasons: (1) The Relative Risk

Assessment found that the only contaminants that posed a potential threat were pathogenic microorganisms; (2) Class I municipal disposal wells are precluded from injecting listed or characteristically hazardous waste streams; (3) Class I municipal disposal wells are allowed to inject only wastewater that has received a level of treatment, specified in individual permits, deemed necessary by the Director to prevent endangerment; and (4) many other contaminants are addressed through EPA's existing pretreatment regulations (see Section IV.B.1.a, above) . If the Director finds that any other contaminants pose a threat to USDWs, that threat can be addressed on a site-specific basis under existing authorities.

In the July 7, 2000, notice, EPA proposed four treatment alternatives that prescribed varying levels of BOD removal. This approach seemed reasonable because BOD, along with TSS, is a universal measure for defining levels of wastewater treatment and contaminant removal. In this sense, EPA does not agree with commenters who said that BOD cannot be used as a parameter for defining the level of treatment necessary to protect drinking water. However, the Agency does acknowledge, as several commenters pointed out, that a BOD standard would not necessarily achieve the objectives of today's final rule. EPA believes that the State's definition and standards for high-level disinfection which uses a standard for fecal coliform and a TSS limit, rather than a BOD limit, sufficiently defines the level of treatment that is necessary to protect USDWs.

The July 7, 2000, notice also proposed nutrient (nitrogen and phosphorus) removal as an element of some of the treatment alternatives. However, EPA agrees with those commenters who said that nutrient removal may not be necessary based on two findings from the Relative Risk Assessment: (1) There is not strong evidence that Class I injection has caused or may cause exceedances of the nitrate MCL in USDWs; and (2) there is not strong evidence that nutrients released by Class I injection wells are migrating into surface waters. These findings do not necessarily mean that nutrients are never a potential concern, only that there is not sufficient evidence to compel a nutrient removal standard for all wells. Therefore, today's rule does not require nutrient removal. However, the Director retains the flexibility and discretion under current authority to address nutrients on a case-by-case basis if necessary to protect USDWs.

e. Rationale for Phasing In the New Treatment Over Time. EPA agrees with commenters who said that it will take time for facilities to install high-level disinfection systems. Therefore, the final rule requires owners and operators wishing to avail themselves of today's final rule's alternative endangerment standard to have high-level disinfection installed and operating within five years of the rule's effective date, if they have already been notified by the Director that they have caused or may cause fluid movement, or within five years of the time they are so notified. EPA selected five years because it is consistent with the time that has been determined to be needed to install high-level disinfection at Miami-Dade Water & Sewer Department, South District Wastewater Treatment Plant. In the meantime, the Director has the authority to require additional operating requirements on a site-specific basis to address any potential for endangerment until the additional treatment goes into operation.

2. In-Depth Hydrogeologic Demonstrations

Today's rule does not provide the option for facility owners and operators to use a hydrogeologic demonstration to show that injection either will not cause fluids to enter USDWs, or if that cannot be shown, will not cause USDWs to exceed MCLs or other health-based standards (i.e., will not endanger USDWs). This approach was originally proposed as Option 2 and discussed further in the NODA. EPA has instead determined that, where injection has caused or may cause fluid movement into USDWs, pretreatment, secondary treatment, and high-level disinfection is the only effective alternative to the ''no-movement'' standard as a means of ensuring non-endangerment.

EPA does not agree with commenters who support the use of hydrogeological demonstrations in lieu of wastewater treatment. EPA believes that existing compliance monitoring programs are not sufficient to protect against movement of contaminants into USDWs, nor do they provide sufficient early warning of contamination. To demonstrate that injected fluids are not migrating into and endangering a USDW, a facility would need to show the full areal extent of the fluids' movement and its quality. However, as discussed in the NODA, ground water monitoring wells at most deep well facilities in Florida are only intended to provide some initial indication of fluid movement and are not capable of characterizing the full areal extent of fluid movement, especially where natural conduits for flow are present. Moreover, once any contamination is detected, it may be too late to prevent endangerment.

There are at least two other problems with relying on monitoring for this purpose. First, deep monitoring wells are very costly to site, design, and construct. As stated in the NODA, it is unclear whether it would be practicable to provide a sufficient number of additional ground water monitoring wells to provide the information needed to demonstrate that injection has not caused fluid movement, or that USDWs are not being contaminated at sites where natural conduits for flow exist. Second, there is a potential that monitoring wells installed for this purpose could themselves create artificial conduits for fluid movement. Additional deep monitoring wells would have to perforate all shallow confining layers as they are installed, posing the risk of contamination along the well borehole to more shallow aquifers.

EPA also does not believe that modeling can provide an adequate demonstration in the complex geology of Florida. For example, in the Relative Risk Assessment, EPA used numerical modeling to simulate the time of travel for fluid to move vertically from the injection zone to USDWs and the depth of hypothetical public water supply wells. This modeling used input parameter values for porous media flow (relatively slow movement through small pore spaces) and for preferential flow (rapid movement through larger fissures, cracks, fractures, voids, and channels). The Agency found that the time of travel estimated from the preferential flow model matches actual experience fairly closely at Miami-Dade and Pinellas Counties. However, the modeling only simulated time of travel and did not show the full extent of the movement of injectate from specific sites. A more in-depth modeling effort to show the extent of vertical and horizontal movement of the hundreds of millions of gallons a day would require information on the location and extent of fissures, cracks, voids, and channels which is impossible, using current technologies, to obtain with any certainty. Therefore, the Relative Risk Assessment showed that a credible hydrogeological demonstration that would need to rely on this type of more in-depth modeling does not appear feasible at this time.

Finally, in the public comments, EPA did not receive answers to key questions that it posed in the NODA as to whether hydrogeological demonstrations were feasible (*i.e.*, whether they would work

or whether they were adequate for showing that there was no endangerment to USDWs). Commenters did not describe how the technical challenges and missing information regarding wastewater fate and transport could be overcome, or how the UIC Program Director might address these difficulties in his or her review and decisionmaking. With no new information on how to effectively use monitoring data or effectively simulate the location and extent of channels and solution cavities that are pervasive in Florida's complex geology, a final rule allowing demonstrations would establish an expensive and burdensome approval process. The Agency questions (based on all of the evidence cited above) whether that process would yield credible demonstrations. Before adopting this approach, EPA would need extensive credible evidence that facilities can provide demonstrations that would show where all, or a significant volume, of the fluid is located and that it does not endanger drinking water sources.

Given these uncertainties about the subsurface geology of Florida, the ability of ground water monitoring to identify and characterize the full extent of fluid movement, and the ability of models to predict the movement of fluids in the Florida subsurface, EPA has determined that relying on hydrogeologic demonstrations would not be sufficiently protective of USDWs. Today's rule therefore takes the more conservative approach of requiring owners and operators in certain parts of Florida to treat their injected wastewater using pretreatment, secondary treatment, and high-level disinfection if they wish to avail themselves of the alternative endangerment standard.

C. Monitoring Requirements

Today's rule does not add any new monitoring requirements to those that currently exist in the Federal regulations at 40 CFR 146.13. That section provides the Director with authority to require a site-specific monitoring program and periodic monitoring of ground water quality within the lowermost USDW and aquifer above the injection zone. The State's monitoring requirements and the procedures for modifying those requirements also remain in effect.

In the July 7, 2000, notice, EPA did not propose any changes to the monitoring requirements for Class I municipal disposal wells. EPA did, however, consider adding more specific requirements for effluent and ground water monitoring than currently contained in 40 CFR 146.13, and asked for comments on the appropriate level of monitoring.

EPA agrees with comments on the proposal saying that deep ground-water monitoring does not, by itself, prevent endangerment, and thus is not prescribing new deep monitoring requirements as part of today's rule. EPA believes that the threat of USDW contamination in the targeted areas of Florida is best addressed by requiring the wastewater to be treated with pretreatment, secondary treatment, and high-level disinfection before it is injected. Nevertheless, the Agency recognizes that effluent and ground water monitoring provides an indication of whether treatment is sufficient and working as it was designed and whether fluid movement is occurring. EPA believes that the current authority provided to the Director in 40 CFR 146.13 for a site-specific monitoring program is sufficient and that appropriate monitoring requirements for effluent and ground water will be prescribed by the State in the facility permit. This provision allows the Director to require that certain parameters and contaminants be monitored and reported, some of which have specific health-based limits under the national primary drinking water regulations. The Director also has the authority to require other contaminants to be monitored in order to ''protect the health of persons'' even if a national primary drinking water regulation has not been promulgated.

D. Rule Applicability

1. How Will the New Rule Affect New Wells?

EPA agrees with several public comments on the Agency's proposal, to require any new Class I municipal disposal well constructed in one of the counties in Florida identified in today's rule to meet the pretreatment, secondary treatment, and high-level disinfection standard being established for existing wells. To be clear, the standard applies to any new Class I municipal disposal well in the counties in Florida identified in today's rule, not just new wells at facilities that (as determined and notified by the Director) have caused or may cause fluid movement, per new 40 CFR 146.16 in today's rule.

Contrary to other public comments, EPA does not believe that applying the rule to new wells will prohibit new facilities or wells from being constructed. EPA believes that new wells in the identified counties where there is a history of fluid movement can be constructed and operated to meet the new treatment standards as a way to ensure the protection of USDWs.

2. What Florida Counties Are Covered by the Final Rule?

As mentioned previously, EPA did not receive any public comments regarding the proposed list of Florida counties to be targeted by the rule. Therefore, the rule is being finalized to apply only to publically and privately owned facilities in those counties listed in the proposal, as follows: Brevard, Broward, Charlotte, Collier, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia. These counties are being targeted because they have the unique geologic conditions that are predominated by carbonate rocks, as discussed above.

E. Reclassification of Wells That Have Caused Fluid Movement

In today's action, EPA is promulgating new Class I requirements. In the NODA, EPA asked for comment on whether, based on the findings of the Relative Risk Assessment, wells with fluid movement should be regulated as Class I, Class V, or under provisions for both Class I and Class V.

Public comments on this issue were mixed. Some commenters were in favor of reclassifying the wells as Class V, saying that the injection zone and confining layers are sufficiently similar to be considered a single formation. Other commenters were against reclassifying the wells as Class V, citing concerns that doing so would lead to greater reliance on injection as a wastewater disposal method or that Class V standards would provide less protection.

After considering these different approaches and public comments, EPA believes the best approach is to keep the wells as Class I and impose the new requirements as a condition for future injection. As previously discussed in Section IV A, this approach does represent a change in the criteria (i.e., currently ''no fluid movement'') that apply to certain Class I wells in certain counties in Florida, but it embraces the long-standing approach of controlling injectate quality as a way to ensure protection when fluid movement is known or suspected. Therefore, EPA believes that the rule is protective and entirely consistent with measures used in the Federal UIC Program, does not undermine the goals or integrity of the Class I program, and does not set a dangerous precedent for other Class I

wells found to be causing fluid movement. Reclassifying the wells as Class V would provide no greater protection than this rule but would introduce substantial confusion and new burdens to well owners and operators and regulators, who would have to develop and implement substantially revised UIC programs.

V. Cost of the Rule

In the absence of the availability of the regulatory alternative in today's rule, owners and operators with wells that have caused or may cause fluid movement to a USDW would need to find a way to operate so that the injected fluid does not move into a USDW. However, that simply cannot be done if the movement is a function of a lack of sufficient confinement. Owners and operators would face having to close their wells and adopt other disposal alternatives. For the purpose of estimating the cost of the final rule, EPA assumes that operators would have to use surface disposal, because Florida has not approved new ocean disposal pipelines for many years in order to protect its coral reefs and beaches.

The economic analysis supporting today's rule compares the costs of compliance under the previous regulations (the baseline) with the costs of compliance under the new rule. The baseline scenario assumes that operators of affected wells would be required to abandon their injection wells and switch to surface disposal. Assumptions for estimating the cost of complying with today's rule include the addition of treatment necessary at each affected facility to meet the high-level disinfection requirements of Florida Rule 62–600.440(5)(a)–(f). Of a total of 42 Class I municipal disposal well facilities in Florida, EPA estimates that approximately 16 cause or may cause fluid movement into a USDW and therefore fall within the scope of this rule. EPA estimates costs only for those 16 facilities.

To develop the cost estimates, EPA used Version 3.0 of EPA's W/W Costs Model, combined with a methodology recommended by the National Drinking Water Advisory Council (NDWAC). The W/W Costs Model generates capital and annual operations and maintenance (O&M) costs based on treatment technology, design and average daily flows, and chemical dose.

EPA relied on information from Florida DEP to determine the number of wells that would likely be affected by the rule. The State reports that there has been confirmed fluid movement into USDWs from deep wells at three facilities. The State also reports that fluid has likely moved into USDWs from wells at another five facilities and that fluid has moved outside of the permitted injection zone into a non-USDW at another eight facilities.

EPA also used relevant information from domestic wastewater facility permits, compliance monitoring data, and information about the availability of high-level disinfection to determine the required treatment upgrades for each facility. At many of these facilities, high-level disinfection capacity is already in place; at the remainder, if movement into the USDW is likely, high-level disinfection will be necessary if the well is to avail itself of the authorization to inject provided by this rule, once these requirements are adopted by Florida as part of its UIC program and approved by EPA. For this reason, EPA has included all 16 of the wells with varying degrees of fluid movement or suspected movement in the economic assessment for the rule. The 16 facilities included in the cost assessment are for the purpose of estimating the cost of today's rule. This rule does not specifically require any of these facilities to install additional treatment. The remaining wells in Florida with no fluid movement outside the injection zone may never have fluid movement detected in deep monitoring wells, or, over a period of years and decades, some will show fluid movement. Due to this level of uncertainty, EPA did not include them in the economic assessment for this rule. EPA does not believe that owners and operators will incur additional costs due to the pretreatment requirements of this rule, because the 16 facilities with varying degrees of fluid movement or suspected movement already have a pretreatment plan in place or have no significant industrial users.

Based on the cost analysis, today's rule is significantly less costly than the baseline requirements. The table below presents a summary of the total capital and annualized costs (at two discount rate scenarios—3 percent and 7 percent) for the baseline case and under today's rule. The cost savings are calculated by subtracting costs for the injection requirements associated with today's alternative approach from the baseline case. As the table shows, the costs for meeting the new requirements for 14 of 16 existing facilities, that are not already required to install additional wastewater treatment, where there is some form of fluid movement or suspected movement is $27.7 million in capital costs and $7.2 million annually (3 percent discount rate), including O&M, as compared to the baseline costs of $132.2 million in capital costs and $15.2 million annually (3 percent discount rate). At the 7 percent discount rate, the annualized capital costs and O&M costs are $7.9 million. Thus, today's alternative represents a savings of $104.5 million in capital costs and $8.0 million annually at the 3 percent discount rate ($12.6 million at the 7 percent discount rate). EPA's complete cost estimation document is in the Florida UIC docket.

Scenario	Total cost (in millions)			Average cost per facility—based on 14 facilities * (in millions)		
	Capital costs	Annualized costs (annualized capital + O&M)		Capital costs	Annualized costs (annualized capital + O&M)	
		3%	7%		3%	7%
Baseline: Abandon injection wells and switch to surface disposal	$132.2	$15.2	$20.6	$9.4	$1.1	$1.5
Today's rule: Continue injecting after treating with high-level disinfection	27.7	7.2	7.9	2.0	0.5	0.6
Cost Savings	104.5	8.0	12.6	7.5	0.6	0.9

Note: Numbers may not appear to add due to independent rounding.
Costs are annualized over 20 years.
* Two of the 16 affected facilities are under a consent order and are excluded from the cost analysis.

EPA solicited comments on the cost estimation approach. A few commenters provided input on costs at specific affected facilities, and several general comments were offered on the cost analysis, including that it is overly simplistic, given the complexity of the rule. Many commenters believed the cost of the rule as proposed was too high. The comment response documents in the Florida UIC docket provide a more complete summary of and response to these comments on the cost analysis.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

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

One comment was submitted on this topic, stating that the proposed rule is a significant regulatory action. The commenter believes the rule will create a serious inconsistency or otherwise interfere with an action by another agency and will raise novel legal and policy issues. The commenter did not provide any specific information in support of the comment. EPA does not agree with this comment. Providing this alternative set of requirements for certain Class I wells in Florida does not create any inconsistency with the rest of the UIC program, nor does it raise novel issues triggering this Executive Order. Today's alternative applies the Agency's long-standing Class V endangerment test to a class of municipal disposal wells that are unique to Florida. That these wells are suspected of injecting below formations without adequate confinement makes application of the Class V standard both reasonable and appropriate. As noted in Section V above, the Agency estimates that implementing the selected option will result in a savings of $104.5 million in capital costs and $8.0 million annually.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The ICR estimates monitoring, demonstration, reporting, and recordkeeping burdens and costs for Class I municipal disposal well operators in selected parts of Florida associated with today's rule. Class I municipal disposal well operators must submit this information per § 144.51 of the CFR. Information regarding wastewater quality, treatment, and migration will be collected as outlined in the rule for review by the State of Florida as primacy agent. Under the rule, the Primacy State would be required to revise and resubmit a UIC program application for Class I wells.

Information collected under SDWA and, by extension, this ICR is expected to be used by EPA and the State of Florida to help ensure the maintenance of clean, safe public drinking water supplies.

Operators of injection wells may claim confidentiality, as provided in section 144.5, Confidentiality of Information. If confidentiality is requested, the information is treated in accordance with the provisions of 40 CFR part 2, Public Information. Information collected under this ICR is intended for the Agency's and/or State's internal use and there are no plans to routinely release or publish any of the data. However, if no claim of confidentiality is made at the time of submission, the information can be made available to the public without further notice.

EPA estimates that the average annual burden on Class I municipal disposal well operators (which includes public and private entities) and the State of Florida associated with this rule will be 2,003 hours. This is based on an estimate that one State, Florida, will need to provide 6 responses each year at 88.4 hours per response. It is also estimated that each of the 16 Class I municipal disposal well operators will need to provide an average of 10.7 responses each year at an average of 138 hours per response. The labor burden is estimated for activities associated with reading and understanding the rule, performing and reviewing monitoring, and meeting primacy requirements. No respondents are expected to incur capital or O&M costs to complete information collection requirements. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the rule.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's action on small entities, a small entity is defined as: (1) A small business that is primarily engaged in waste management services as defined by NAICS code 562998 with annual revenue less than $6 million according

to Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Of a total of 42 Class I municipal disposal well facilities in Florida, EPA estimates that approximately 16 cause or may cause fluid movement into a USDW and fall within the scope of this rule. As discussed in Section V, the economic impact of this action actually results in a cost savings to the Class I municipal disposal well facilities compared to the baseline, i.e., complying with existing UIC regulations. Because Class I municipal disposal well facilities that may avail themselves of the authorization to inject provided by this rule are only affected if they cause or may cause fluid movement prohibited by present law, EPA has determined that the effect on small entities will be positive to the extent they are impacted. If the entity chooses not to follow these new requirements, the legal status of its continued operations is not impacted by the rule. We have therefore concluded that today's final rule either will have no effect on or, in the alternative, will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

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

Today's rule contains no Federal mandate (under the provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector. Because the authorization to inject provided for by today's rule is optional on applicants, the costs incurred by an entity in conjunction with such authorization to inject under the rule are discretionary, not mandated. The total cost impact, in comparison to other alternatives to provide effective wastewater disposal, is anticipated to be positive for those entities that choose to avail themselves of the option provided by this rule. This rule will reduce the burden imposed by the current regulations. 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 rule is not targeted at small governments. It offers owners and operators of Class I municipal disposal wells in certain parts of Florida that inject domestic wastewater effluent an alternative method of compliance with the existing UIC rules, which prohibit fluid movement, without requiring the facilities to cease injection and abandon their existing Class I municipal disposal wells. This rule will provide them with a less burdensome alternative for compliance. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule allows for an optional alternate method for the State of Florida to use to ensure that no owner and/or operator would endanger a USDW by injection of domestic wastewater effluent into a Class I municipal disposal well. EPA is not requiring that an owner and/or operator use this authorization, but rather is providing options that owners and/or operators of existing Class I municipal disposal wells may wish to use in order to maintain their injection operations. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule. Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with the Florida Department of Environmental Protection (FDEP) in developing this rule and FDEP agrees with EPA's approach.

Two public comments were submitted on this topic. Both comments suggest EPA should revise its determination under Executive Order 13132, and claim the rule imposes significant burdens and costly solutions on the State of Florida. One commenter suggested that EPA modify its final rule to allocate all permitting decisions solely to the State.

In response, today's rule does not change the current process by which the State of Florida exercises its primacy over injection operations in the State. While the State would have to revise and resubmit a UIC program application for Class I wells if it wished to provide owners and operators of Class I municipal disposal wells in Florida with the optional authorization contained in this rule, it is anticipated that the Director will retain authority over Class I injection in Florida. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA solicited comment on the proposed rule from State 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 final rule does not have Tribal implications as specified in Executive Order 13175. At present, there are no Class I injection wells used for domestic wastewater effluent disposal in Florida that are owned or operated by an Indian Tribal community. The intent of this rule is to protect all USDWs from endangerment caused by Class I municipal disposal wells, including those on Tribal land.

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

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

This final rule is not subject to Executive Order 13045 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 rule provides an optional authorization for certain Class I wells in Florida to inject domestic wastewater effluent in accordance with regulatory requirements designed to prevent endangerment of underground sources of drinking water. The criteria established in the rule safeguard these resources for all potential users, including but not limited to children.

Three comments were received on this topic from environmental advocates and a citizen. All three suggest that the proposal has not adequately assessed potential risk to children's health, or that contaminants in injected wastewater may have a disproportionate effect on vulnerable populations, including children. EPA disagrees that Class I municipal disposal of wastewater that has been subjected to pretreatment, secondary treatment, and high-level disinfection as a result of this rule will have a disproportionate impact on children or any other vulnerable population. By requiring pretreatment, secondary treatment, and high-level disinfection as a condition of future operation of the targeted injection wells, the rule is ensuring the protection of USDWs and the health of children who may rely on these USDWs as drinking water sources.

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

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

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law. No. 104–113, 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are [Underground Injection Control Program—Revision of Federal Underground Injection Control Requirements for Class I Municipal Disposal Wells in Florida Page 62 of 62.] 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 does not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 22, 2005.

List of Subjects in 40 CFR Part 146

Environmental protection, Hazardous waste, Indians-lands, Water supply.

Dated: November 15, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 146 is amended as follows:

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

■ 1. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

Subpart B—Criteria and Standards Applicable to Class I Wells

■ 2. Section 146.15 is added to Subpart B to read as follows:

§ 146.15 Class I municipal disposal well alternative authorization in certain parts of Florida.

(a) Existing Class I municipal disposal wells in specific geographic regions as defined in paragraph (f) of this section may continue to inject without violating the regulatory prohibitions in Parts 144 and 146 of this chapter against the

movement of injection or formation fluids into a USDW, provided that such wells meet the requirements of this section, even if the Director determines they have caused or may cause fluid movement into a USDW. Nothing in this section excuses such Class I municipal disposal wells from meeting all other applicable State and Federal requirements including 40 CFR 144.12(a).

(b) For purposes of this section, an existing Class I municipal disposal well is defined as a well for which a complete UIC construction permit application was received by the Director on or before December 22, 2005.

(c) For purposes of this section, the determination that a Class I municipal disposal well has caused or may cause movement of injection or formation fluids into a USDW may be made by the Director based on any relevant data available to him/her, including ground water monitoring data generated pursuant to regulatory requirements governing operation of Class I municipal disposal wells.

(d) In order for a Class I municipal disposal well to qualify for authorization to inject pursuant to paragraph (a) of this section, the Owner/Operator of that well shall:

(1) Develop and implement a pretreatment program that is no less stringent than the requirements of Chapter 62–625, Florida Administrative Code, or have no significant industrial users as defined in that chapter.

(2) Treat the injectate using secondary treatment in a manner that is no less stringent than the requirements of Florida Rule 62–600.420(1)(d), and using high-level disinfection in a manner that is no less stringent than the requirements of Florida Rule 62–600.440(5)(a)–(f), within five years after notification by the Director that the well has caused or may cause fluid movement into a USDW.

(e) Where the Director issued such notice for a well prior to December 22, 2005, in order for that well to qualify for authorization to inject pursuant to paragraph (a) of this section, the Owner/Operator shall:

(1) Develop and implement a pretreatment program that is no less stringent than the requirements of Chapter 62–625, Florida Administrative Code, or have no significant industrial users as defined in that chapter; and

(2) Treat the injectate using secondary treatment in a manner that is no less stringent than the requirements of Florida Rule 62–600.420(1)(d), and using high-level disinfection in a manner that is no less stringent than the requirements of Florida Rule 62–600.440(5)(a)–(f), within five years after December 22, 2005.

(f) Authorization to inject wastewater into existing Class I municipal disposal wells pursuant to this section is limited to Class I municipal disposal wells in Florida in the following counties: Brevard, Broward, Charlotte, Collier, Flagler, Glades, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pinellas, St. Johns, St. Lucie, Sarasota, and Volusia.

■ 3. Section 146.16 is added to Subpart B to read as follows:

§ 146.16 Requirements for new Class I municipal wells in certain parts of Florida.

Prior to commencing injection, any Class I municipal disposal well in one of the counties identified in § 146.15(f) that is not an existing Class I municipal disposal well as defined in § 146.15(b) of this section shall meet all of the requirements for existing wells seeking authorization to inject pursuant to § 146.15.

[FR Doc. 05–23088 Filed 11–21–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1022–F]

RIN 0938–AJ36

Medicare Program; Hospice Care Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises existing regulations that govern coverage and payment for hospice care under the Medicare program. These revisions reflect the statutory changes required by the Balanced Budget Act of 1997 (BBA), the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). Additionally, these revisions reflect current policy on the documentation needed to support a certification of terminal illness, admission to Medicare hospice, and a new requirement that allows for discharges from hospice for cause under very limited circumstances.

This final rule does not address the requirement for hospice data collection, the changes to the limitation of liability rules, or the changes to the hospice conditions of participation that were included in the BBA.

The intent of this final rule is to expand the hospice benefit periods, improve documentation requirements to support certification and recertification of terminal illness, provide guidance on hospice admission procedures, clarify hospice discharge procedures, update coverage and payment requirements, and address the changing needs of beneficiaries, suppliers, and the Medicare program.

DATES: These regulations are effective on January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Linda Smith, (410) 786–5650.

SUPPLEMENTARY INFORMATION:

I. Background

A. Hospice Care

Hospice care means a comprehensive set of services described in 1861(dd)(1) of the Social Security Act (the Act), identified and coordinated by an interdisciplinary team to provide the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and family members or both as denoted in a specific patient plan of care.

The emphasis of hospice care is on the control of pain and the furnishing of services that enable the beneficiary to remain at home as long as possible with minimal disruption to normal activities. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as the unit of care.

B. Medicare Hospice Before the Balanced Budget Act of 1997

The Balanced Budget Act of 1997 changed and clarified numerous aspects of the Medicare hospice benefit including the length of available benefit periods, the amount of annual updates, how local payment rates are determined, the time frame for physician certification, and what is considered a covered Medicare hospice service. Section 1861(dd) of the Act provides for coverage of hospice care for terminally ill Medicare beneficiaries

who elect to receive care from a participating hospice. Beneficiaries are eligible to elect the Medicare hospice benefit if they are eligible for Medicare Part A; are certified as terminally ill by their personal physician, if they have one, and by the hospice medical director; and elect to receive hospice care from a Medicare-certified hospice. Section 1861(dd)(3)(A) of the Act defines terminally ill as a medical prognosis with a life expectancy of 6 months or less. This definition was clarified to provide for a life expectancy of ''6 months or less if the illness runs its normal course'' when we amended 42 CFR 418.3 in our December 11, 1990 final rule with comment period titled ''Hospice Care Amendments: Medicare'' (55 FR 50834).

A Medicare beneficiary who has elected the hospice benefit can receive care for specific lengths of time referred to as benefit periods. Under the Tax Equity and Fiscal Responsibility Act of 1982, hospice care was made available in three distinct benefit periods, the first two lasting 90 days, and the third lasting 30 days. The total amount of Medicare hospice coverage was 210 days. Because of the scientific difficulty in making a prognosis of 6 months or less, the 210-day limit was repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 for services furnished on or after January 1, 1990. The benefit periods were restructured into two periods of 90 days duration, one period of 30 days duration, and a fourth period of unlimited duration. Prior to the BBA of 1997, if a beneficiary voluntarily left the program or was discharged from it, he or she forfeited the remaining days in the benefit period. When this occurred during the fourth benefit period, the beneficiary could never again receive the Medicare hospice benefit. A beneficiary in the fourth benefit period who became ineligible for hospice care services because he or she no longer met the eligibility requirements would then return to normal Medicare coverage and would never be eligible for the Medicare hospice program, even if his or her condition once again became terminal.

The BBA of 1997 amended the election and benefit period procedures to state that once a patient elects the Medicare hospice benefit, the patient gives up the right to have Medicare pay for hospice care furnished by any hospice provider other than the one that he or she has selected, unless the selected hospice provider arranges for services to be furnished by another provider or if the patient elects to change providers. Also during the benefit period, the beneficiary gives up the right to receive any other Medicare payment for services that are determined to be related to his or her terminal illness or other related conditions or that are duplicative of hospice care. Medicare would continue to pay for a beneficiary's covered medical needs unrelated to the terminal condition.

The Medicare hospice benefit includes nursing services; medical social services; physician services; counseling services, including dietary and bereavement counseling; short-term inpatient care, including respite care; medical appliances and drugs; home health aide and homemaker services; physical therapy; occupational therapy; and speech-language pathology services. Medicare-certified hospices furnish care using an interdisciplinary team of people who assess the needs of the beneficiary and his or her family and develop and maintain a plan of care that meets those needs.

Under section 1814(i) of the Act, Medicare payment for hospice care is based on one of four prospectively determined rates that correspond to four different levels of care for each day a beneficiary is under the care of the hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. The prospective payment rates are updated annually and are adjusted by a wage index to reflect geographic variation. The payment rules are in our regulations at 42 CFR part 418, subpart G, ''Payment for Hospice Care.''

II. Hospice Provisions of the Balanced Budget Act of 1997, the Balanced Budget Refinement Act of 1999, and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

The Balanced Budget Act of 1997 (BBA) included a number of provisions affecting the Medicare hospice benefit. Additionally, the Balanced Budget Refinement Act (BBRA) of 1999 and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made additional changes to the Medicare hospice benefit. Program Memorandum (PM A–97–11), released in September 1997, implemented most of the hospice-related BBA provisions.

The limitation of liability rule changes were implemented through the Program Memorandum (PM A–97–11), issued in September 1997. A hospice cost report for the hospice data collection requirement was developed and issued in April 1999.

A. Payments for Hospice Services (Section 4441 of the BBA)

Section 4441(b) of the BBA amended section 1814(i) of the Act to require hospice management to submit cost data for each fiscal year beginning with fiscal year 1999. A hospice cost report to collect this information was issued in April 1999. To allow hospices enough time to prepare for the new requirement, the implementation of the hospice cost report was delayed until cost reporting periods beginning on or after April 1, 1999.

B. Payment for Home Hospice Care Based on Location Where Care Is Furnished (Section 4442 of the BBA)

Section 4442 of the BBA amended section 1814(i)(2) of the Act, effective for services furnished on or after October 1, 1997, required hospices to submit claims for payment for hospice care furnished in an individual's home only on the basis of the geographic location at which the service is furnished. Previously, local wage index values were applied based on the geographic location of the hospice provider, regardless of where the hospice care was furnished. Hospices were able to inappropriately maximize reimbursement by locating their offices in high-wage areas and actually delivering services in a lower-wage area. Applying the wage index values for rate adjustments on the geographic area where the hospice care is furnished provides a reimbursement rate that is a more accurate reflection of the wages paid by the hospice for the staff used to furnish care.

C. Hospice Care Benefit Periods (Section 4443 of the BBA)

Section 4443 of the BBA amended sections 1812(a)(4) and 1812(d)(1) of the Act to provide for hospice benefit periods of two 90-day periods, followed by an unlimited number of 60-day periods. This amendment changed the previous hospice care benefit periods. Each period requires a physician to certify at the beginning of the period that the individual has a terminal illness with a prognosis that the individual's life expectancy is 6 months or less, should the illness run its normal course. Though it continues to be true that the remaining days in a benefit period are lost once a beneficiary revokes election of the hospice benefit or is discharged from the hospice, the restructured benefit periods will allow the beneficiary, or the hospice, to make this type of decision without placing the beneficiary at risk of losing hospice benefit periods in the future.

Section 4449 of the BBA indicated that the benefit period change applied to the hospice benefit regardless of whether or not an individual had made an election of the benefit period before the date of enactment. Therefore, beneficiaries who elected hospice before the BBA and who, after the passage of the BBA, were discharged from hospice care because they were no longer terminally ill, were able to avail themselves of the benefit at some later date if they became terminally ill again and otherwise met the requirements of the Medicare hospice benefit. If the beneficiary had been discharged during the initial 90-day period, he or she would enter the benefit in the second 90-day period. If the discharge took place during the final 90-day period or any subsequent 60-day period, the beneficiary would enter the benefit in a new 60-day period. A beneficiary who had been discharged from hospice during the fourth benefit period before the enactment of the BBA would be eligible to access the benefit again, if certified as being terminally ill, and would begin in a new 60-day period. The 90-day periods would not be available again, as amended section 1812(d)(1) of the Act still provides only for two 90-day periods during an individual's lifetime. There is no limit on the number of 60-day periods available as long as the beneficiary meets the requirements for the hospice benefit.

D. Other Items and Services Included in Hospice Care (Section 4444 of the BBA)

Section 1861(dd)(1) of the Act lists the specific services covered under the Medicare hospice benefit. It has always been Medicare's policy that Medicare hospice includes not only those specific services listed in section 1861(dd)(1) of the Act, but also any service otherwise covered by Medicare that is needed for the palliation and management of the terminal illness. Section 4444 of the BBA reiterated this policy by amending section 1861(dd)(1) of the Act to add a new subparagraph ''I'' to the list of covered hospice services in section 1861(dd)(1) of the Act, effective April 1, 1998. This new provision states that any other service that is specified in the plan of care, and for which payment may otherwise be made under Medicare, is a covered hospice service. This change underscores our previous construction of the law as requiring that the hospice is responsible for furnishing any and all services indicated as necessary for the palliation and management of the terminal illness, and related conditions, in the plan of care. A Medicare beneficiary, who elects hospice care, gives up the right to have Medicare pay for services related to the terminal illness or related conditions, outside of the hospice benefit. Section 1861(dd)(1) of the Act contains a list of services and therapies covered under the Medicare hospice benefit. This list does not include services like radiation therapy, which are often furnished by hospices for palliative purposes. This change clarifies that these additional necessary services are covered under the hospice benefit and cannot be billed separately to Medicare.

E. Extending the Period for Physician Certification of an Individual's Terminal Illness (Section 4448 of the BBA)

Section 4448 of the BBA amended section 1814(a)(7)(A)(i) of the Act to eliminate the specific statutory time frame for the completion of a physician's certification of terminal illness for admission to a hospice for the initial 90-day benefit period. It requires only that certification be done ''at the beginning of the period.'' In accordance with our understanding of congressional intent, this change, (for example, as indicated by the title of section 4448), was made to extend the period for physician certification of the terminal illness by allowing hospices the discretion to require that hospice certifications are on file before a Medicare claim is submitted.

Before the BBA, hospices were required to obtain, no later than 2 calendar days after hospice care was initiated, written certification that a person had a prognosis of a terminal illness with a life expectancy of 6 months or less. For the first benefit period, if the written certification could not be obtained within the 2 calendar days following the initiation of hospice care, a verbal certification could be made within 2 days following the initiation of hospice care, with a written certification not later than 8 calendar days after care was initiated. For subsequent benefit periods, written certification was required no later than 2 calendar days after the first day of each benefit period. Under the new certification requirement, certification must be done ''at the beginning of the period.'' To protect the beneficiaries, we are requiring that the hospice obtain written certification before it submits a claim for payment.

This new certification requirement also applies to individuals who had been previously discharged during a fourth benefit period and are being certified for hospice care again to begin in a new 60-day benefit period. Also, due to the restructuring of the benefit periods, any individual who revoked, or was previously discharged from, the hospice benefit, and then reelects to receive the hospice benefit in the next available benefit period, will need to be recertified as if entering the program in an initial benefit period. This means that the hospice must obtain verbal certification of terminal illness no later than 2 days after care begins, and written certification before the submission of a claim to the fiscal intermediary.

F. Effective Date (Section 4449 of the BBA)

The provisions of the BBA discussed above, unless noted otherwise, became effective for services furnished on or after the date of enactment of the BBA, or August 5, 1997. Section 4444 of the BBA, the other services provision, was effective on April 1, 1998.

G. Clarification of the Physician Certification Requirement (Section 322 of BIPA)

Section 322 of BIPA amended section 1814(a) of the Act by clarifying that the certification of an individual who elects hospice ''* * * shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.'' The amendment clarified that the certification is based on a clinical judgment regarding the usual course of a terminal illness, and recognizes the fact that making medical prognostications of life expectancy is not always exact. This amendment at section 322 of BIPA clarifies and supports our current policy. In the early 1990's, we discovered that in many cases certification and recertification occurred without the documentation that would support the terminal illness prognosis. Accordingly, in 1995, we issued program memoranda requiring clinical information and other documentation that support the medical prognosis. This documentation must accompany a certification and be filed in the patient's medical record.

We recognize that medical prognostications of life expectancy are not always exact. However, the amendment regarding the physician's clinical judgment does not negate the fact that there must be a basis for a certification. A hospice needs to be certain that the physician's clinical judgment can be supported by clinical information and other documentation that provide a basis for the certification of 6 months or less if the illness runs its normal course. A signed certification, absent a medically sound basis that supports the clinical judgment, is not sufficient for application of the hospice

benefit under Medicare. Section 322 of BIPA became effective for certifications made on or after the date of enactment, December 21, 2000.

Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final rule. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final rule except under exceptional circumstances.

This final rule finalizes provisions set forth in the November 22, 2002 proposed regulation with some changes based on public comments (67 FR 70363). In addition, this final rule has been published within the 3-year time limit imposed by section 902 of the MMA. Therefore, this final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

III. Provisions of the Proposed Regulations

In the proposed rule published November 22, 2002 (67 FR 70363), we proposed to amend 42 CFR Chapter IV by revising part 418. We proposed to make conforming changes to the Medicare hospice regulations to reflect the statutory changes, to revise the regulation to reflect current policy and to clarify requirements regarding the documentation needed to support a certification of terminal illness and the admission to and discharge from a Medicare hospice. We proposed to add one new requirement that would allow for discharges from hospice for cause under very limited circumstances.

A. Duration of Hospice Care Coverage—Election Periods (§ 418.21)

In § 418.21, we proposed to revise paragraph (a) to make hospice benefit periods available in two 90-day periods followed by an unlimited number of 60-day periods (requirement of section 4443 of the BBA).

B. Certification of Terminal Illness (§ 418.22)

We proposed to revise the cross reference in § 418.22(a)(1) from ''§ 418.21'' to ''§ 418.21(a)'' and remove the phrase ''for two, three, or four periods'' and replace it with ''for an unlimited number of periods'' to reflect the changes in the hospice care election periods (requirement of section 4443 of the BBA). We proposed to revise the basic requirement at paragraph (a)(2) to state that the hospice must obtain written certification before it submits a claim for payment (requirement of section 4448 of the BBA), and we proposed to revise the exception at paragraph (a)(3) to state that, if the hospice cannot obtain the written certification within 2 calendar days, it must obtain an oral certification within 2 calendar days, and the written certification before it submits a claim for payment. Therefore, oral certifications, which are necessary only if the hospice is unable to obtain written certification within 2 calendar days of the start of the benefit period, would be required for each benefit period rather than for just the initial 90-day period. We proposed to maintain our requirement for verbal physician's certification no later than 2 days after hospice care begins because we continue to believe that proper and timely assessment of a patient's condition is of critical importance both to the hospice, which becomes responsible for the patient, and to the patient, who must have a sound basis for choosing palliative rather than curative care.

As a condition of eligibility for a Medicare hospice program, an individual must be entitled to Medicare Part A and be certified as terminally ill. The Act also requires that this certification be made in writing by either the hospice medical director or the physician member of the interdisciplinary group, and by the attending physician, if the patient has one. However, the law does not explicitly discuss what information a hospice physician needs to consider before making a certification of terminal illness.

Operation Restore Trust (ORT), a joint effort among the Centers for Medicare & Medicaid Services, the Office of the Inspector General, and the Administration on Aging to identify vulnerabilities in the Medicare program and to pursue ways to reduce Medicare's exposure to fraud and abuse, identified several areas of weakness in the hospice benefit, primarily in the area of hospice eligibility. In 1995, as a result of early ORT findings, we issued a letter to all Regional Offices and Regional Home Health Intermediaries (RHHIs) clarifying what should be included in a patient's medical record to support the certification of terminal illness. Subsequent ORT reports, and medical reviews conducted by RHHIs, have raised concerns about inappropriate certifications and recertifications and problems with a lack of documentation to support a prognosis of terminal illness. These reports and reviews found that certifications are being made for patients who are chronically ill but who are without complications or other circumstances that indicate a life expectancy of 6 months or less.

In response to these concerns, we proposed to revise § 418.22(b) by adding introductory text, redesignating paragraph (b) as paragraph (b)(1), and adding an additional requirement for the content of certification as paragraph (b)(2). The introductory text would state that certification for the hospice benefit would be based upon the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. In paragraph (b)(2), we proposed requiring that clinical information and other documentation supporting the medical prognosis accompany the written certification and be filed in the medical record as required under § 418.22(d).

C. Election of Hospice Care (§ 418.24)

In § 418.24, we proposed to add to paragraph (c), ''Duration of election,'' a new paragraph (c)(3) to state that an election to receive hospice care would be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual is not discharged from the hospice under the provisions of § 418.26. This addition would clarify that only revocation by the beneficiary or discharge by the hospice terminates an election.

D. Admission to Hospice Care (§ 418.25)

Also in response to concerns raised by ORT, we proposed to establish general guidance on hospice admission procedures. Currently, there is no guidance in manuals or regulations regarding admission procedures. We proposed to add a new § 418.25, ''Admission to hospice care,'' which establishes specific requirements to be met before a hospice provider admits a patient to its care.

Paragraph (a) would permit a hospice to admit a patient only on the recommendation of the medical director in consultation with the patient's attending physician, if any. We realize that many hospice patients are referred to hospice from various ''nonmedical'' sources. This is entirely appropriate; however, it is the responsibility of the

medical director, in concert with the attending physician, to assess the patient's medical condition and determine if the patient can be certified as terminally ill.

Paragraph (b) would require that the hospice medical director consider at least the following information when making a decision to certify that a patient is terminally ill: diagnosis of the patient's terminal condition; any related diagnoses or comorbidities; and current clinically relevant information supporting all diagnoses.

E. Discharge From Hospice Care (§ 418.26 and § 418.28)

As with admission to hospice, the statute does not explicitly address when it is appropriate to discharge an individual from hospice care. The Internet Online Manual (IOM) Medicare Benefit Policy Manual, Section 20.2.1 Hospice Discharge, explains that discharge is allowable only if the patient is no longer terminally ill or if the patient moves out of the service area.

We proposed to add a new § 418.26, ''Discharge from hospice care,'' to specify when a hospice may discharge a patient from its care. Paragraph (a), ''Reasons for discharge,'' would specify that a hospice may discharge a patient if—

1. The patient moves out of the hospice's service area or transfers to another hospice;

2. The hospice determines that the patient is no longer terminally ill; or

3. The hospice determines, under a policy set by the hospice for the purpose of addressing ''discharge for cause'' that also meets the requirements discussed in the remainder of the new paragraph (a), that the patient's behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired. Before the hospice seeks to discharge a patient, we would require it to make a serious effort to resolve the problem(s) presented by the patient's behavior or situation; ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into the patient's medical records; and obtain a written physician's order from the patient's attending physician and hospice medical director concurring with the discharge from the hospice.

Since the inception of the Medicare hospice program, we have received inquiries from hospices regarding patients and their family members or primary caregivers who elected hospice but subsequently became uncooperative or hostile (including threats of physical harm and to the extent that hospice staff could not provide care to the patient) when the facilities attempted to provide care. In the absence of regulations or guidance from Medicare regarding these situations, hospices were uncertain as to their authority to act to resolve this type of problem. We offered informal guidance that if the hospice had made a conscientious effort to resolve the problem and had documented that effort, and the patient refused to revoke the benefit voluntarily, a discharge would be indicated. Failure to revoke the benefit could place the patient in a compromised position in which the patient would not be able to receive services from the hospice but would at the same time be unable to obtain services under the standard Medicare program because of his or her hospice status. An additional concern is the issue of daily payments being made to a hospice when no services are being provided.

Paragraph (b), ''Effect of discharge,'' specifies that an individual, upon discharge from the hospice during a particular election period for reasons other than immediate transfer to another hospice, is no longer covered under Medicare for hospice care and resumes Medicare coverage of the benefits waived under § 418.24(d). If the beneficiary becomes eligible for the hospice benefit at a future time, he or she would be able to elect to receive this benefit again.

Although the statute does not explicitly address when a hospice may discharge a patient from its care, we realize that there are certain instances in which it is no longer appropriate for a hospice to provide care to a patient. A decision that a hospice patient is no longer terminally ill is generally not made during one assessment. However, once it is determined that the patient is no longer terminally ill, the patient is no longer eligible to receive the Medicare hospice benefit. Currently, the regulations do not provide any time for discharge planning between the determination that the patient is no longer terminally ill and discharge from the benefit. Since the BBA has ended the limitation on available benefit periods during a beneficiary's lifetime, we expect to see an increase in the number of beneficiaries being discharged from, or revoking, the hospice benefit because they can no longer be certified as terminally ill. However, it is common for these beneficiaries to remain in medically fragile conditions and in need of some type of medical services in order to remain at home. It is important that hospice providers consider these needs so that support structures can quickly be put into place should the patient's prognosis improve.

Therefore, we proposed to add a paragraph (c), ''Discharge planning,'' in the new requirement at § 418.26. We require at paragraph (c)(1) that the hospice have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change that the patient cannot continue to be certified as terminally ill. Additionally, we proposed at paragraph (c)(2) that the discharge planning process must ensure that planning for the potential of discharge includes consideration of plans for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

Finally, we proposed to revise § 418.28(b)(1) to permit discharges for cause (under proposed § 418.26(a)) if a patient refuses to sign a revocation statement. A signed revocation statement serves to protect hospice patients whose hospice may seek to discharge them because of possible higher costs associated with use of necessary services. Under current regulations, if a patient, who otherwise would be discharged for cause, were to refuse to sign a revocation statement, the hospice would be in the position of receiving daily payments from Medicare for a person who cannot receive services. Paragraph (b)(1) would permit waiver of a signed revocation if one were not obtainable in cases of discharge for cause. Our utmost concern is that there are sufficient patient protections in place to ensure appropriate delivery of care and, if needed, discharge planning.

F. Covered Services (§ 418.202)

We proposed to add a new paragraph (i) to § 418.202 to state that any other service that is specified in the patient's plan of care as reasonable and necessary for the palliation and management of the patient's terminal illness and related conditions, and for which payment may otherwise be made under Medicare, is a covered hospice service. This change was made by section 4444 of the BBA and was a clarification of long-standing Medicare policy.

G. Payment for Hospice Care (§ 418.301, § 418.302, § 418.304, and § 418.306)

In addition to reflecting the payment changes required by the BBA, we proposed to add a new paragraph (c) to § 418.301, ''Basic rules.'' This paragraph

would restate the basic requirement, included in the provider agreement, that the hospice may not charge a patient for services for which the patient is entitled to have payment made under Medicare or for services for which the patient would be entitled to payment if the provider had completed all of the actions described in § 489.21. Since this requirement is currently included in the provider agreement, we would restate it in this part for clarification only.

We proposed to add a new paragraph (g) to § 418.302, ''Payment procedures for hospice care,'' to provide that payment for routine home care and continuous home care would be made based on the geographic location where the service is provided (requirement of section 4442 of the BBA).

We proposed to update the rules found at § 418.304, ''Payment for physician services,'' to reflect current payment methodology for physician services under Medicare Part B. References to reimbursement based on reasonable charges would be replaced with references to the physician fee schedule. We proposed to revise the first sentence of paragraph (b) to clarify that a specified Medicare contractor pays the hospice an amount equivalent to 100 percent of the physician fee schedule, rather than 100 percent of the physician's reasonable charge, for those physician services furnished by hospice employees or those under arrangement with the hospice. We also proposed to revise the second sentence of paragraph (c) to specify that services of the patient's attending physician, if he or she is not an employee of the hospice or providing services under arrangements with the hospice, are paid by the carrier under the provisions in 42 CFR Part 414 Subpart B.

Finally, in § 418.306, ''Determination of payment rates,'' we proposed to revise paragraph (b)(3) and to add new paragraphs (b)(4) and (b)(5) to set the payment rate in Federal fiscal years 1998 through 2002 as the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase minus 1 percentage point, with the exception that the payments for the first half of FY 2001 shall be increased 0.5 percent, and then increased an additional 5 percent over the above calculation. Payments for all of FY 2002 were increased by 0.75 percent.

IV. Analysis of and Responses to Public Comments

We received a total of 27 timely public comments in response to the November 22, 2002 proposed rule (67 FR 70363). Some of the organizations we received letters from were hospice providers, national stakeholder and advocacy groups, national and State hospice associations, and other health care providers and suppliers. All public comments were reviewed and grouped by the same or related topics. The comments and our responses are summarized below.

A. Duration of Hospice Care Coverage—Election Periods (§ 418.21)

Comment: A commenter stated that the regulations should make clear that if a beneficiary revokes the benefit and there are unused days remaining in the benefit period, the beneficiary is free to re-elect hospice before those unused days pass.

Response: Section 418.26(b)(3) specifically states that the individual ''may at any time elect to receive hospice care if he or she is again eligible to receive the benefit.'' Section 418.28(c)(3) also contains similar language.

Comment: One commenter requested that the new benefit period rules apply to State Medicaid programs that offer hospice.

Response: This would be up to individual States, who generally follow Medicare hospice rules.

Comment: A commenter asked us to state in the final rule that there is no 6-month limit on hospice eligibility as long as there is documentation to support medical reviews of cases when this happens.

Response: We do not believe this language needs to be included in the final rule. The 6-month rule applies to eligibility for the hospice benefit, including a patient's prognosis and life expectancy. Medical reviews are not automatic in the event that a patient lives longer than 6 months, and could occur at any point during an individual's time in hospice including less than 6 months if this review were indicated.

B. Certification of Terminal Illness (§ 418.22)

Comment: A few commenters believe that the proposed rule would require oral certifications for each benefit period, and that oral certification is required from the medical director and the attending physician for all benefit periods, a new and unnecessary burden.

Response: This is not correct. An oral certification is only needed if no written certification is obtained within 2 days. This change in regulations implements a BBA provision that the Congress intended to ease the burden of obtaining a written certification within 2, or at the latest, 8 days after the start of the initial benefit period. Now, the written certification is required before a hospice submits a claim for payment. Therefore, oral certification will be required if the written certification cannot be obtained within 2 days following the start of the benefit period. In fact, the rules for certification for periods following the initial period are unchanged. Section § 418.22(c), the regulation concerning the initial certification and those that followed, was not part of the proposed changes published on November 22, 2002 (67 FR 70363). This regulation requires the attending physician's (if there is one) certification for the initial period. Subsequent periods only require certification by the hospice's medical director or the physician member of the hospice IDG.

Comment: Several commenters are concerned that language calling for ''specific clinical findings and other documentation'' at § 418.22(3)(b)(2) could end up with requirements that would become excessively specific and cause access problems due to a perception that exacting documentation requirements must be met; or that additional tests must be performed, beyond what already will have sufficiently established that eligibility is met. Commenters suggested that physician experience and not simply lab or pathology reports be recognized.

Response: It appears that the word ''specific'' may be skewing the intention of the regulation. This rule is being added to formalize policy that came in response to OIG/ORT findings in the mid-1990s, when a number of admissions to hospices were happening with little or no documentation that supported a certification for hospice. We expect that a hospice patient's medical record would contain sufficient information to support the certification of the individual as having a terminal illness with a life expectancy of 6 or fewer months, if the illness runs its normal course. We believe it is reasonable to expect documentation to support the certification. We are removing the word ''specific'' and changing ''findings'' to ''information'' so that the phrase would read ''clinical information and other documentation.'' Section 322 of BIPA called for the physician's ''clinical judgment,'' and this regulation simply asks that it be supported.

Comment: A commenter stated that the best approach to certification might be for the attending physician to refer patients he or she believes eligible, and for the medical director to exercise his or her best judgment regarding concurrence.

Response: The Medicare statute is clear about the responsibility of the hospice's medical director to certify, along with the attending physician for the initial benefit period, the individual as eligible for hospice.

Comment: Two commenters believe we were compromising the intent of BIPA by requiring oral certifications for each benefit period, requiring a hospice to expend additional resources without any obvious benefit. One commenter believes this is a new requirement. Another commenter indicated that it ignores Congressional intent.

Response: In a sense, this is a new requirement, but it protects and ensures timely medical care for the beneficiary as well as significantly eases the written certification burden on the hospice. The hospice regulations have always required written certification at the start of each benefit period. The Congress made no indication that this rule should end. Now, all that is required, if a written physician certification cannot be completed within 2 calendar days after a period begins, is that an oral certification be obtained. Previously a written certification was required within 2 days for every period after the initial benefit period, or the hospice would be faced with the possibility of a claim being denied. We are following Congressional intent, in that the Congress indicated that the written hospice certification rule should follow the home health rule, and be on file before a claim is submitted.

Comment: A commenter believes that clinical information and documentation do not need to accompany the certification, and urged that we delete ''accompany'' in the requirement at § 418.22(b)(2), replacing it with simply a requirement that the information be in the medical record. The commenter believes that if documentation had to accompany the certification, care could be delayed or even denied, and an unnecessary burden would be placed upon the hospice and other providers. Several commenters pointed out that frequently hospices obtain certifying information over the phone from the referring physician, which is then recorded and placed in the patient's medical record.

Response: We believe that clinical information and documentation are critical to the certification decision. We recognize that some documentation may physically arrive at the hospice and be placed in the medical record after the start of care; however, that should not mean that the information does not come to the attention of the hospice and be included in the certification and admission process. The attending physician may well report clinical information by telephone or interview, with written documents to arrive later. It is the information needed for the hospice's IDG to develop the initial plan of care for the new patient, and therefore we would expect the information to accompany, in some fashion, the certification, although some of it may not arrive physically at the hospice until later. We are revising this final rule to indicate that clinical information may initially arrive verbally and is documented in the patient's medical record as part of the hospice's assessment of eligibility for hospice.

Comment: A commenter objected to oral certification within 2 days after the start of each benefit period, believing it is unnecessary record keeping.

Response: Certification no later than 2 days after the start of each benefit period is not a new requirement. Past regulations required that certification be in writing no later than 2 days after the start of care for all periods after the initial period. The oral certification is a way to protect and ensure timely medical care for the beneficiary as well as easing the written certification burden on the hospice. This final rule requires oral certification (if needed) for all benefit periods, and in writing before a claim for the period is submitted.

Comment: A few commenters stated that it was burdensome and unnecessary to require clinical information and documentation as part of the certification that supports the physician's clinical judgment that the individual is terminally ill with a prognosis of 6 months or less to live if the illness runs its normal course. There were suggestions that BIPA's amendment of the statute, which provides for ''certification based on the physician's or medical director's clinical judgment * * *'' was sufficient, without any supporting documentation at the time of certification. It was noted that prognosis is inexact at best, and that we seemed to be requiring accurate predictions (with possible penalties for failure to be precise).

Response: As discussed in the preamble of the November 22, 2002 proposed rule (67 FR 70363), the Medicare statute does not explicitly describe what a physician needs to consider before certifying a patient for hospice. In that preamble, we cited early ORT findings (which were partly based upon other OIG and intermediary medical reviews of patient records) as clearly indicating a need for requirements that certifications be supported by clinical findings and documentation. (Elsewhere in this preamble, we discuss the replacing of the word ''findings'' with ''information'' in the final rule.) Our 1995 letters to RHHIs clarified expectations for supporting documentation, and this information was widely disseminated to the hospices and the hospice industry. Response to our effort was positive. At that time, claims were coming under closer scrutiny, and failure to find documentation in medical records that supported certification and the need for hospice caused denial of claims. CMS has sent out widely disseminated letters that made it clear that Medicare supports accessibility to the hospice benefit. The letters recognized that prognosis is not an exact science, and that the impact of a hospice's services may sometimes lead to brief periods of improvement. Nevertheless, it is reasonable to expect that information supporting physician certifications be provided to ensure that patients beginning hospice are appropriate for this type of care.

Comment: One commenter stated that written certifications did not need to be obtained by the hospice before submission of claims for periods following the initial period and could be obtained later.

Response: A written certification has been required by statute since the inception of the Medicare hospice program.

Comment: There was a comment that certification of the terminal illness should be based on either the attending physician's certification or the hospice's medical director's certification.

Response: This is a statutory requirement. Section 1814(a)(7)(A) of the Social Security Act requires that both the hospice's physician (either the medical director or physician member of the interdisciplinary group) and the attending physician (if the patient has one) must certify patients for the Medicare hospice benefit for the initial period. For subsequent benefit periods, the hospice physician alone may certify patients for the hospice benefit. The attending physician does not have sole or surrogate power to certify for admission for any benefit period.

C. Election of Hospice Care (§ 418.24)

No comments were received.

D. Admission to Hospice Care (§ 418.25)

Comment: A commenter suggested that the medical director alone certify patients for hospice.

Response: Though the medical director or physician member of the hospice interdisciplinary group must certify for each election period, the attending physician (if any) is also

required, by statute, to do so for the first election period.

Comment: Some commenters believe the regulation would require the attending physician to participate in all certifications that may be required, and that it imposes a barrier to obtaining hospice care. Further, it would subvert the role of the IDG. It would also increase costs unnecessarily, since some patients are near death by time of admission.

Response: This is not correct. An attending physician (if the patient has one) does certify for the initial period, but is not required or expected to do any subsequently needed certifications. We would expect the attending physician to be consulted by the medical director or IDG if he or she has maintained significant involvement in the case.

Comment: A commenter believes this rule negates the role of the IDG in the admission process.

Response: The role of the IDG is not changed by this rule. Regulations at § 418.22(c)(1)(i), which includes the physician member of the interdisciplinary group as a party who may certify terminal illness, remain the same.

Comment: A commenter believes that the November 22, 2002 proposed rule requires excessive involvement by the Medical Director in the patients' admission to hospice, such as physically seeing the patient before admission, making telephone calls to the attending physician, and obtaining original history and physical reports.

Response: Currently, to be admitted to hospice, the patient must meet the eligibility requirements at § 418.20(b) ''certified as being terminally ill in accordance with § 418.22.'' It is the physician's responsibility to assess the patient's medical condition and determine if the patient can be certified as terminally ill. This is reflected in Section 418.22(c)(i) and (ii), Sources of Certification, which states that for the initial 90-day period, certification statements must be obtained from ''the medical director of the hospice or the physician member of the hospice interdisciplinary group; and the individual's attending physician if the individual has an attending physician.'' The new requirements at § 418.25 provides clarification of the physician's responsibilities as it relates to the admission process.

Comment: Some commenters suggested that this final rule would require the medical director to consult directly with the attending physician, and that it would be a poor and expensive use of the director's time. Some commenters stated that it would be a needless impediment that would add delays to the start of hospice care. One commenter stated that the final rule required every piece of medical documentation be in the hands of the medical director before an admission decision is made. One commenter stated that the hospice nurse, while obtaining pre-admission information, would be the more appropriate individual to obtain an attending physician's input in the admission process.

Response: It is not our intent to require a face-to-face or any type of direct consultation between the Director and the attending physician. We are revising the language to indicate that the medical director has considered patient information from the attending physician that may be obtained through consultation, or through information obtained indirectly. Information could be obtained through the hospice nurse or others who would bring the attending physician's knowledge of the patient to the medical director when the admission decision is being made. We also note that the medical documentation does not necessarily need to be physically in the hands of the medical director, but that the information presented is considered in the decision. The medical reports may arrive later for retention in the patient's medical record.

Comment: A commenter suggested that the proposed rule required an attending physician to be consulted, which would be impossible if the patient did not have one.

Response: The proposed rule included the phrase ''if any'' following ''attending physician'' but preceded by a comma. We have made ''if any'' a parenthetical phrase after attending physician to make it clearer that we recognize that there may not be an attending physician in all cases.

Comment: One commenter is concerned that small hospices that use volunteer medical directors would be forced to hire a Medical Director at a big expense. The commenter believes that volunteers would be reluctant to offer their time because consultation with attending physicians at the time of admission would require more time than they would be willing to provide. Other commenters believe that hospices, especially small ones with part-time medical directors with separate private practices, will face considerable increased costs if medical directors were forced to consult with attending physicians.

Response: We cannot know whether this final rule would cause volunteer physicians to cease participating in any particular hospice program, or what additional costs a hospice would face with respect to its part-time medical directors. However, no matter what the status of the hospice medical director—employee or volunteer—that individual (or the physician member of the IDG) has always had a responsibility to review the appropriateness of admission of new patients to hospice. The ORT/OIG reports from the mid-1990s investigations made it clear that we need to make sure that certifications were not simply a physician signature upon a document alone, but that there was documentation supporting the admission decision that had been considered. The medical director's certification is an essential part of the admission procedure, and the director considering the attending physician's knowledge of the patient is part of the certification decision. As we discussed elsewhere in the preamble, the consultation need not be direct, but the attending physician's input should be considered in the admission process.

Comment: A commenter stated that the medical director must submit documentation regarding his or her consideration of the documentation.

Response: The medical director would only need to document that the pertinent clinical information had been considered in the certification process. The documentation includes a diagnosis of the patient's terminal condition; any related diagnoses or comorbidities; and current clinically relevant findings supporting all diagnoses.

Comment: A commenter objected to § 418.25(b) describing the information that should be considered by the medical director when certifying a patient.

Response: We believe that this final rule clarifies the expectation that underlies the basis for making a significant decision about an individual accepting his or her terminal condition and the treatment plans that are to come. It is information that should be considered, and we do not think that the final rule should be modified.

Comment: One commenter opposes this admission section of the proposed regulations entirely, citing election and certification as the only requirements for beginning hospice. The commenter believes that the admission rules would make it impossible for a hospice to admit certain individuals for care for a terminal illness that does not meet the Medicare eligibility requirements for the benefit, but for whom the hospice would not submit claims to Medicare.

Response: As we explained in the preamble to the proposed rule (67 FR 70367), this regulation would establish guidance on hospice admission

procedures. It clarifies and supports the election and certification rules by describing the process by which a medical director must certify that a patient is terminally ill and, thus, admit that patient to the hospice. In addition, the admission rules, along with election and certification rules would not necessarily pertain to an individual that does not meet Medicare eligibility rules but whom the hospice otherwise decides to offer services to without cost to Medicare.

E. Discharge From Hospice Care (§ 418.26)

We received some comments that indicated that a discharge for cause rule offered helpful guidance in cases where patients consistently refused to permit the hospice to visit or deliver care, or it was dangerous for staff to visit the home, or when the patient repeatedly left the service area. Other commenters asked for specificity in the regulations regarding circumstances when the discharge for cause rule might apply. We do not believe it is possible to do this without creating either an excessively lengthy regulation or one that due to over-specificity would unintentionally take the flexibility that the hospice may need to act. We do plan to offer some guidance and examples in the hospice manual.

Comment: Some commenters want family added along with the patient as a source of problems that could be a reason to consider a discharge for cause. Commenters cited examples such as threats from the patient's family, or drug stealing and drug dealing by members of the patient's household.

Response: We agree, and have amended the proposed rule to take other persons (which would include family) in the patient's home into account. To the extent that the situation interferes with the ability of the hospice staff to provide care efficaciously, it may be appropriate to discharge the patients. However, we would expect the hospice to make every effort to rectify the situation before ending its services, with documentation of what transpired in the case. Alternative suggestions and referrals for care should be presented to the patient and his or her caregiver before ending services.

Comment: A commenter suggested that failure on the part of the patient to follow the plan of care be identified as a reason for discharge. Instances of the patient going to the emergency room without first contacting the hospice were cited, particularly with respect to financial issues where the patient would be responsible for care not arranged for through the hospice.

Response: We do not think that single instances of the patient/family going to the emergency room without prior authorization from the hospice would necessarily be a valid reason for discharge. Failure to follow important clinical features of the POC may be a reason to consider discharge, but a panicked reaction to an emergency should not be, by itself, a reason to terminate services. It is important for the patient and family to be educated before the start of care that hospice entails certain limits in the way care will be provided once hospice services begin, among them being restrictions on obtaining care outside those provided or arranged for by the hospice, and the patient's potential liability for care received without the hospice's involvement. It is particularly important that the patient and caregiver be instructed on what to do in a crisis or emergency.

Comment: Some commenters believe that it would be very difficult to obtain a patient's attending physician's signature when discharging a patient for cause, and that in any event many attending physicians cease following their patients after hospice begins. Some patients never had an attending physician. Other commenters worry that an attending physician could override an IDG decision, when the attending physician's opinion was not needed or that in the case of an attending physician who disagreed with discharge, it would place him or her in a compromised position with his or her patient. Further, the commenter stated that it is ultimately the hospice's responsibility to decide upon discharge of patients.

Response: If there is no attending physician involved in a patient's care, then such a requirement would seem to create a problem. At the same time, a discharge for cause is a serious matter where we believe the patient needs some protection from a hospice that may behave unethically and try to discharge a patient because he or she may require more attention or care than the hospice wished to offer. If there is an attending physician, his or her opinion matters. However, to reduce a burden that the proposed rule might have created if it were finalized, we are revising the requirement at § 418.26(b) to read, ''Prior to discharging a patient for any reason listed in subsection (a), the hospice must obtain a written physician's discharge order from the hospice medical director. If the patient has an attending physician involved in his or her care, the physician should be consulted before discharge and his or her view included in the discharge note.'' This would help ensure that the attending physician's position on discharge for cause is taken into account, as well as giving the attending physician an opportunity to participate in post-discharge planning for the patient.

Comment: Some commenters suggested that either the attending physician or medical director could sign a discharge order.

Response: We cannot accept this suggestion. It is the responsibility of the hospice to make this decision, just as it is the hospice's decision to admit the new patient. Elsewhere in this preamble, we have indicated that the final rule has been revised to indicate that the attending physician is to be consulted and his or her views included in the discharge note.

Comment: Commenters want the discharge-planning rule made conditional upon the possibility that there will be time to plan, or that planning only be done when possible, since some patients may need immediate discharge because they are no longer terminally ill. Requests were made for a time frame for determining stability requiring discharge.

Response: The rule requires that the hospice have in place a process ''that takes into account the prospect that a patient's condition might stabilize or otherwise change''. We do not expect that a discharge would be the result of a single moment that does not allow time for some post-discharge planning. Rather, we would expect that the hospice's IDG is following their patient, and if there are indications of improvement in the individual's condition such that hospice may soon no longer be appropriate, then planning should begin. If the patient seems to be stabilizing and the disease progression has halted, then it could be the time to begin preparing the patient for alternative care. Discharge planning should be a process, and planning should begin before the date of discharge. We have tried to avoid prescriptive time frames for discharge planning, since we have long been aware that merely the attention that hospice services give to a patient can have a beneficial effect, creating the impression that the individual may no longer be ''actively dying'' and therefore ineligible for the Medicare hospice benefit. Therefore, we cannot offer a specific number of days or weeks that a patient may be stable and thus not eligible. We see this issue as one requiring physician/IDG judgment and would only ask that the judgment be supported by documentation in the medical record indicating the reason

why hospice should continue if there seems to be improvement such that discharge is under consideration.

Comment: A commenter wanted the discharge of a patient who moves out of the service area or who transfers to another hospice to include patients who temporarily leave the hospice's service area without notifying or making arrangements with the hospice.

Response: If the patient transfers to another hospice, then the assumption is that arrangements have been made, and end and start dates of care have been worked out. This is not a temporary move, and discharge issues should not arise. Concerning patients who leave the hospice service area temporarily, this issue should have been addressed by the hospice at the time of admission when the hospice explains to the patient the waiver of benefits that occur upon election of the hospice benefit. If the hospice patient leaves the service area and attempts to obtain care for his or her terminal condition for which hospice was elected, then the patient assumes financial responsibility for this care. It is not necessarily a reason to discharge a patient unless there is a repeated pattern of such activity and it interferes with the care that the hospice plan of care calls for. The hospice should counsel the patient regarding the consequences of obtaining care from sources other than the hospice. The patient may even decide to revoke the benefit under the circumstances.

Comment: A commenter does not believe a discharge plan should be required for all patients, since live discharges are rare. Imposing this requirement for every patient would be an unnecessary and costly burden.

Response: We believe that the commenter may have misunderstood the purpose of the proposed rule. A hospice would need to have a process in place should the condition of a patient show indications that hospice possibly may no longer be the appropriate treatment for that individual. We do not expect that every patient will have a discharge plan prepared. However, should a hospice patient's condition seem to be improving (beyond just brief periods of improvement that sometimes occur simply because the individual is receiving attention and some symptom relief), the hospice IDG should have a discharge planning process available in order to help make plans for the individual's discharge and follow-up care as may be needed. We would expect most patients would not have a discharge plan ever; however, when indicated, the hospice would have the ability to begin the process timely.

Comment: A commenter believes that requiring a written physician's order for discharge of a patient, ignored the role of the IDG, including the attending physician if he or she is participating.

Response: We agree about the essential role of the IDG, and we would expect their participation in any discharge decisions. However, it is the commonly accepted practice for a physician to sign an admission or discharge order in hospitals. Similarly, it is the hospice physician who signs a certification for hospice care in order to begin care, and that individual also would consequently be the one to sign the discharge order. Elsewhere in this preamble, we have advised that an attending physician would not be required to sign discharge papers.

Comment: A commenter urged that in cases of discharge for cause the patient should be notified of this possible action.

Response: We agree, and have revised the regulation to reflect this suggestion.

Comment: A commenter wants the beneficiary advised of appeal rights when a discharge for cause is being considered. One commenter noted the potential for misuse of the discharge for cause rule to discharge high-cost patients.

Response: There are no specific appeal rights for the beneficiary regarding such considerations. However, for the protection of the beneficiary, we added to the regulation, a provision that the beneficiary must be notified, by the hospice, that discharge for cause is being considered.

Comment: A commenter suggested that we monitor, analyze, and identify ways to reduce discharge for cause, and perhaps then establish a forum for sharing best practices on maintaining hospice care for difficult patients.

Response: We appreciate the suggestion and will consider it for future program evaluations.

Comment: A commenter complained that having a physician sign a discharge order was creating an additional paperwork burden.

Response: We see the signing of a discharge order in the patient's medical record as part of the physician's administrative activities. Signing the order would simply be the final action at the end of discharge process.

Comment: Some commenters believe that it was inappropriate to ask the hospice, in considering a discharge for cause, to ''ascertain that * * * is not due to * * * use of necessary hospice services,'' and that it would be difficult to prove a negative that the use of services was not a factor in discharge. Commenters did agree that use of necessary services would not be an appropriate reason to discharge.

Response: We believe that this requirement is appropriately in this section of the rule. It is one of our concerns that discharge for cause could be a rule that offers opportunity for abuse, and we want to make it clear that the hospice needs to make sure that it is planning to discharge a patient because of behavior issues, not time or effort or cost factors in providing services to a particular individual. We believe that ascertaining that discharge is not due to the use of necessary services is simply a reminder that some of a hospice's patients require more services. This fact should not influence a discharge decision.

Comment: One commenter suggested that the regulations should not list any reasons for a cause discharge and instead the hospice should set its own policy for discharge for cause. This was based upon the assertion that it is impossible to set forth rules that could address every possible circumstance that would be a reason to seek a cause discharge.

Response: We agree that it is impossible to list every possible reason that an individual might be discharged under this rule. That being said, we believe that the circumstances under which this type of discharge could be considered are adequately addressed by the rule we published. The types of behavior discussed in the rule that seriously impair the hospice's ability to operate effectively and provide care to the patient and the requirements imposed on the hospice are necessary to place some parameters on discharges for cause.

Comment: One commenter is concerned that the hospice would be responsible for post-discharge care of patients discharged for cause, when generally these would be patients that it had already found to be a problem to the extent that it could not provide needed services.

Response: We recognize that it may be very difficult to implement post-discharge care plans for a patient that has proven to be disruptive, abusive, or uncooperative to the extent that services cannot be provided, but post-discharge care would not be the responsibility of the hospice. The hospice would engage in and prepare for after hospice care, but it is up to the patient (and the patient's supporters) to take advantage of other sources of care after discharge. Though not entirely analogous, it is similar to a physician prescribing medication, but it is the responsibility of the patient to take the medication, even after the

physician has fully informed the patient of the importance of doing so.

F. Revoking Election of Hospice Care (§ 418.28)

Comment: A commenter believes that the waiver of a signed revocation when a patient revocation cannot be obtained in cases of discharge for cause should be placed in the section of regulations addressing discharge. The commenter stated that it is confusing to have it in its present location as it mixes discharge and revocation. The commenter also pointed out that a discharge for cause is not revocation. Revocation is voluntary, and mixing it with discharge for cause is confusing and unnecessary.

Response: We agree that this proposal is unneeded, and it has been deleted from the final rule.

G. Covered Services (§ 418.202)

Comment: Commenters objected to ''other covered services'' applying to ''related conditions'' (to the terminal illness), and asked that it be removed from the proposed rule. The commenters feared it would be misinterpreted to mean that the hospice would be responsible for services not related to the terminal illness.

Response: A hospice has always been responsible for the care of the patient's terminal illness and related conditions, and this rule should not be interpreted to mean what the commenter fears, that is, that the hospice provides care unrelated to the terminal illness. At the same time, if the hospice staff notices, for example, that the patient has an eye infection that is unrelated to the terminal illness, then sound health care practices suggest that the hospice staff refer that person to his or her doctor for treatment. Commenters should review the hospice regulation at 42 CFR 418.402, which addresses this concern when it states that ''* * * services not considered hospice care include * * * treatment of an illness or injury not related to the individual's terminal condition.''

Comment: One commenter asked how ''covered services'' might be interpreted by contractors reviewing claims, and whether the lack of specificity defining these services could cause denial of payment if ''covered services'' were determined to be non-covered.

Response: As we discussed in the preamble to the proposed rule, the BBA clarified and codified what had been a Medicare rule, but had not always been well understood: that a ''service that is specified in the patient's plan of care as reasonable and necessary for the palliation and management of the terminal illness and related conditions, and for which payment may otherwise be made under Medicare, is a covered hospice service.'' The decision as to whether a patient requires and receives any particular service from the hospice is, as before, the responsibility of the hospice. A medical review by a contractor would not necessarily consider whether an item was not required and therefore subject to a denial or payment, but rather whether the patient had received the appropriate necessary care for his or her particular terminal condition. Hospice payment is a prospectively-set daily payment to the hospice, and is made without regard to the cost of care on any particular day, nor with regard to the total cost of care during the entire time period that the hospice cares for the patient.

Comment: One commenter believes that the phrase ''otherwise covered by Medicare'' would result in limitations on what patients could receive by way of care, since items not covered by the regular Medicare program would not be available due to this phrase.

Response: The BBA expressly used the cited phrase in amending the law and in a congressional document, indicating that Medicare services that had not previously been specified in section 1861(dd)(1) of the Act were indeed to be made available under the hospice benefit if determined to be medically necessary and ordered in the plan of care.

Comment: A commenter believes that hospices would use this phrase to use unqualified and untrained persons to provide services.

Response: Hospices must meet conditions of participation, which require that their staff be qualified to provide the particular service the patient needs.

Comment: The American Association for Respiratory Care asked whether respiratory therapy, when part of a hospice patient's plan of care, is a Medicare covered hospice service.

Response: Respiratory therapy would be a covered hospice service if the hospice decides its patient requires the service. Provision of the service would be paid for out of the hospice daily rate made to the hospice.

Comment: One commenter suggested that psychologists be recognized as equivalent practitioners to physicians for purposes of payment for mental health services required by a hospice patient. The commenter argued that as an otherwise covered Medicare service, certain patients could benefit from a psychologist's specialized training, but because of the high cost of these services, a hospice would avoid arranging for them. This would be due to the fact that payment would come out of the hospice's daily rate, a limited source of payment for all needed hospice services for individual patients.

Response: The Medicare law, with respect to hospice, only recognizes physicians as defined by statute, that is, medical doctors and osteopaths, and we therefore limit separate additional payments to those practitioners. If a hospice recognizes that its terminally ill patient requires the services of a psychologist, it is free to arrange for it.

H. Payment for Hospice Care (§ 418.301, § 418.302, § 418.304 and § 418.306)

Comment: A commenter requested that § 418.301(c) indicate that hospices pay for medical services not related to the hospice-covered terminal illness. Another commenter asked that we clarify that hospices are only responsible for the care and services related to the terminal illness.

Response: Conditions not related to the terminal illness may be covered under the regular Medicare program, a right that the beneficiary does not lose when hospice is elected. Even though other non-hospice care may be written into the hospice's plan of care to address care and services not related to the terminal illness, which help assure proper care to the patient, the hospice's responsibility is for care and services related to the terminal illness. Of course, the hospice would be expected to make the proper referrals when needed.

Comment: One commenter asked about the change proposed in § 418.304(b), where the phrase ''physician's reasonable charge'' is replaced by ''physician fee schedule''. The commenter wanted to know if this change was the change discussed in the preamble of the proposed rule.

Response: The change in the regulation is the same one discussed in the preamble of the proposed rule.

I. Miscellaneous Comments

Comment: Some commenters believe that we were tightening up the 6-month prognosis, and that it would make physicians more reluctant to refer patients to hospice. Commenters stated that physicians are ''terrible'' at determining prognoses. They feared they would be exposed to scrutiny and penalty if they failed to make accurate prognoses.

Response: As we have noted elsewhere in this section, we know that ''prognosis'' indicates expectancy. It does not connote exact predictions regarding the expected date of death of an individual with a terminal illness. We merely want the certification of the

patient for hospice care to be accompanied by documentation that supports the appropriateness of the hospice benefit.

Comment: One commenter seems concerned by references to ORT, and what was perceived as a disregard for the intent of Congress to make hospice more accessible.

Response: We believe that ORT and other investigations by the OIG are what helped guide the Congress in changes affecting the Medicare hospice benefit, and that we adhered to this effort to make the benefit more accessible. Payments for hospice care increased in response to industry complaints that payments were inadequate, but payment based upon the location at which the services were provided (the individual's home) made it more appropriate in that it reflected the wages paid in the home's location rather than the high cost area where the hospice's home office might be located. The unlimited number of benefit periods permitted the hospice industry and all potential patients to no longer worry that an individual might live into a fourth but final benefit period and then be forced out of hospice care because of improvement in health, only to face permanent loss of access to hospice care in the future because of pre-BBA rules. Physician certification rules were eased, but as discussed elsewhere, the Congress gave no indication that it was dissatisfied with our clarification of requirements that a physician certification of terminal illness be supported by documentation. In addition, the growth of hospice since the ORT/OIG investigations indicates that our clarification has not adversely affected the industry, considering the increases in patient enrollment and Medicare payments for the care.

Comment: A commenter asked about relief from the 24-hour registered nurse requirement for respite care.

Response: This issue is being taken into consideration as CMS drafts the new Hospice Conditions of Participation.

V. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule. The provisions of this final rule that differ from the proposed rule are as follows and changes are based on public comments to provide clarifying language:

Certification of Terminal Illness (§ 418.22)

(a) *Timing of certification: (3) Exception.* Added, ''after a period begins'' to clarify timeframe for written certification within 2 days.

(b) *Content of certification:* Deleted the term ''specific'' and changed ''findings'' to ''information.'' Also added, ''Initially, the clinical information may be provided verbally, and must be documented in the medical record and included as part of the hospice's eligibility assessment.''

Admission To Hospice Care (§ 418.25)

(a) Added clarifying language ''or with input from'' the patient's attending physician and added parentheses around the phrase ''if any.''

Discharge From Hospice Care (§ 418.26)

(a) *Reasons for discharge.*

(3) Added clarifying language ''(or other persons in the patient's home)'' to address public comment that the patient's family may be the problem necessitating a discharge for cause. Also added the following language ''(i) Advise the patient that a discharge for cause is being considered'' to address the public comment that there should be requirements for notification to beneficiaries.

(b) Renumbered and revised proposed paragraph (a)(3)(iv) for clarity as follows ''Prior to discharging a patient for any reason listed in subsection (a), the hospice must obtain a written physician's discharge order from the hospice medical director. If a patient has an attending physician involved in his or her care, this physician should be consulted before discharge and his or her review and decision included in the discharge note.''

Revoking the Election of Hospice Care (§ 418.28)

Deleted proposed change to § 418.28(b)(1).

Payment for Physician Services (§ 418.304)

As a technical correction we are replacing the language ''reasonable charges'' with physician fee schedule: to reflect the current payment methodology. Additionally, the cross-reference to ''subparts D or E, Part 405 of this chapter'' will be changed to ''subpart B, Part 414 of this chapter.''

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection report should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Sections 418.22 and 418.26 of this final regulation contain information collection requirements that are subject to review by OMB under the PRA.

Certification of Terminal Illness (§ 418.22)

The current collection requirements referenced in § 418.22 have been approved by OMB under approval number 0938–0302, with a current expiration date of September 30, 2006. However, this rule imposes a new collection requirement, which requires CMS to solicit comment on the new information collection requirement and resubmit 0938–0302 to OMB for review and approval, as a revision to a currently approved collection.

The newly imposed requirement as referenced under paragraph (b)(2) of this section stipulates that clinical information and other documentation that support the medical prognosis must accompany the certification of terminal illness and must be filed in the medical record with the written certification as set forth in paragraph (b)(2) of this section.

While this requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3 (b)(2) and (b)(3) because the requirement is considered a reasonable and customary business practice and/or is required under State or local laws and/or regulations.

Discharge From Hospice Care (§ 418.26)

Paragraph (a)(3)(iv) of this section requires documentation of the problem(s) related to the patient and efforts made to resolve the problem(s) into the patient's medical records.

Paragraph (b) of this section requires that a written physician's discharge order from the hospice medical director and the decision of the patient's attending physician (if any) concurring with discharge from hospice care be

obtained and included in the patient's medical record.

While these requirements are subject to the PRA, we believe the burden associated with these requirements is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3) because the requirements are considered reasonable and customary business practices and/or are required under State or local laws and/or regulations.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Melissa Musotto, CMS–1022–F, Room C5–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer. Comments submitted to OMB may also be e-mailed to the following address: e-mail: *Carolyn_Lovett@omb.eop.gov* or faxed to OMB at (202) 395–6974.

VII. Regulatory Impact

The provisions of this final rule are based upon provisions in the BBA, BBRA, and BIPA, with statutorily-set timeframes, and have already been implemented through program memoranda. These include changes in election periods; timing requirements for written certification; covered services; payment based upon site of service; and annual payment update amounts. Other proposed provisions address documentation supporting certification; admission requirements; discharge from hospice; and clarification of current policy that has not previously been captured in regulations.

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this rule is not a major rule for the reasons discussed below.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. For purposes of the RFA, in 2001, there were approximately 2,277 Medicare-certified hospices. Of those 2,277, approximately 73 percent can be considered small entities because they were identified as being voluntary, government, or other agency.

Given the general lack of hospice data and the unpredictable nature of hospice care, it is extremely difficult to predict the savings or costs associated with the changes contained in this final rule. Originally, we estimated the Medicare hospice rate reductions required by section 4441 of the BBA would result in a $120 million savings to the Medicare program in FY 2002. Increases required by section 321 of BIPA, however, added $150 million to Medicare program costs, and increases required by section 131 of BBRA added another $20 million in costs, for a net of $50 million in costs for that fiscal year. While it is likely that all of the Medicare-certified hospices considered to be small entities have been required to make changes in their operations in some way due to the implementation of these statutory provisions and proposed changes, this final rule does not set forth any additional changes that are likely to significantly impact the operations of hospice providers. For these reasons, we certify that this final rule will not have a significant effect on a substantial number of small entities. However, we have prepared the following analysis to describe the impacts of this rule. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by the RFA and Executive Order 12866.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This final rule largely codifies existing hospice requirements and will not result in a significant impact on a substantial number of small rural hospitals. Therefore, no analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule does not impose unfunded mandates, as defined by section 202 of UMRA, as it will not result in the expenditure in any 1 year by either State, local or tribal governments, or by the private sector of $110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule has no impact on State or local governments. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and we believe that it will not have substantial Federalism implications.

Section 1902(a)(13)(B) of the Act requires the Medicaid payment methodology for hospice care to be determined using the same methodology that is used for Medicare. State Medicaid programs with the optional Medicaid hospice benefit would be required to implement sections 4441(a) and 4442 of the BBA. We remain unaware of any impact of these provisions on State Medicaid programs since these provisions became effective. Nevertheless, it is possible that these payment-related provisions could impact particular State Medicaid programs. However, because each State Medicaid program is unique, it is impossible to quantify meaningfully an estimate of the effect of the costs on State and local governments.

B. Anticipated Effects

1. Effects on Hospice Providers

Given the general lack of hospice data and the unpredictable nature of hospice care, it is extremely difficult to quantify the impact this final rule will have on hospice providers. Nevertheless, we have tried to estimate the impact of the following changes on hospice providers. In general, we believe that the effect of the final rule will have minimal economic impact on hospice providers or on the regulatory burden of small business. In the following sections, we have indicated implementation actions already taken, and anticipated effects the final rule may have.

2. Effects on Payments

The BBA required hospice providers to bill for routine and continuous home care based on the geographic location where the service was provided. We expect that Medicare would experience some savings with this provision; however, it is impossible to predict the size of the savings attributable to this provision. These Medicare savings may reflect a cost to hospice providers. This BBA change has been implemented through program memoranda. This final rule merely codifies this statutorily required change.

3. Effects on Benefit Period Change

Medicare hospice is now available in two 90-day periods and an unlimited number of 60-day benefit periods. Because there is no longer a limit on the number of benefit periods available to a beneficiary, it is possible that this change will result in an increase in the number of revocations and re-elections. However, we anticipate that this change will have a negligible effect on hospice providers. The change in benefit periods was implemented by a program memorandum issued shortly after passage of the BBA and has already been incorporated into hospice program operations.

4. Effects on Covered Services

The BBA clarified that the Medicare hospice benefit covers any service otherwise covered by Medicare and listed in the hospice plan of care as reasonable and necessary for the palliation and management of a terminal illness. This change should not generate any additional costs for Medicare hospices because it is merely a statutory clarification of existing Medicare policy. This clarification of covered hospice services was implemented through a program memorandum issued before the April 1, 1998 effective date set by the BBA and is merely being codified by this regulation. It helped providers to better determine the services they must provide.

5. Effects of Physician Certification

The requirement that a written certification of terminal illness for admission to a hospice for the initial 90-day benefit period be on file before a claim for payment is submitted will not impose any additional costs on hospice providers and removes the problem of obtaining the written certification according to a rigid timeframe. This requirement will provide hospices with more flexibility to establish cost-efficient procedures for obtaining the required certifications. However, the expansion of the requirement for verbal certifications to every benefit period may impose costs on hospice providers. Before enactment of the BBA, verbal certifications were required within 2 days of the start of care during the first benefit period if a written certification could not be obtained within those 2 days. We are requiring that, absent written certification, verbal certifications of terminal illness be obtained within those 2 days for each benefit period. Although we believe the impact of this requirement would be negligible, it is difficult to estimate the exact size of the impact of this requirement because some costs may be negated by the increased flexibility, and time, a hospice provider has in obtaining the required written certifications.

Additionally, we believe that requiring that written certifications of terminal illness be accompanied by clinical information and documentation supporting the prognosis will not impose any new costs on hospice providers. We released a policy memorandum in 1995 to all hospice providers, through the fiscal intermediaries, requesting that all hospices maintain documentation demonstrating a beneficiary's terminal status. Because it has been 10 years since we issued the policy calling for clinical information and other documentation supporting the terminal prognosis, we do not anticipate that the requirement will alter hospices' current practices.

6. Effects on Admission to Hospice Care

We believe that the final rule describing admission responsibilities will impose no additional burden upon hospices. The responsibilities were referred to in various regulations, manuals, program memoranda, and other correspondence; this regulation brings them together in an organized rule. ORT and OIG investigations and reviews found that admission activities were not always executed fully, or when done, they were not always documented. This final rule specifies the consultation between the attending physician and the hospice and its medical director that normally does or should take place when a physician seeks hospice care for his or her patient. The final rule also describes the consideration that the medical director gives when deciding upon certification, to the patient's diagnosis, related diagnoses, medical information that support those diagnoses, the overall medical management needs of the patient, and the attending physician's future plans for the patient. We do not believe any new costs are associated with these requirements, and the 1995 policy memorandum had made clear the hospice admission responsibilities and the need to document their execution. We found that the hospice provider community was generally pleased that we had issued the guidance, which alleviated previous problems associated with admission of beneficiaries to hospice care.

7. Effects on Discharge and Discharge Planning

This final rule may add a small additional burden to hospices providing services to Medicare beneficiaries, but at the same time, it also should reduce certain other burdens they may currently experience, particularly with respect to making appropriate discharges. In the absence of specific regulations, hospices have often been uncertain what to do when a patient appeared appropriate for discharge from the program. There was limited manual guidance, although following the ORT and OIG investigations, some additional information on the appropriate time to discharge patients was communicated to the hospice industry. Our final rule would incorporate discharge planning, a normal part of health care provision, into the hospice's care planning procedures. Regular, ongoing care planning, including the potential for discharge, has always been part of a hospice's responsibilities, and the regulation would simply recognize this responsibility. It is not a new additional burden.

Discharge for certain disruptive, abusive, or uncooperative patients will entail a small additional burden upon very few hospices, based on past discussions with some providers before preparation of this final rule. We believe the burden is small, because we have rarely received requests from hospices over the years for relief in cases involving this type of behavior. In the

preamble to the proposed rule, we elicited input on this particular final rule, particularly with respect to protection of patients. We are aware of the burden that individual providers have had when faced with difficult patients, and this regulation would provide a way for them to resolve it, and, we believe, also lessen burdens currently experienced when trying to provide care to this type of patient.

The section of this final rule that discusses the effect of discharge, that is, that a beneficiary discharged from hospice care immediately resumes full coverage under the regular Medicare program, has always been the law. However, it has not been stated in regulation in a straightforward manner, and doing so offers reassurance to both the beneficiary and the hospice that discharge from the hospice does not mean the loss of Medicare benefits. This section also assures a beneficiary that he or she may again elect hospice at any future time if he or she meets eligibility requirements.

8. Effects on Other Providers

We do not anticipate that this rule will have any effects on other provider types.

9. Effects on the Medicare and Medicaid Programs

As discussed above, it is very difficult to estimate the size of any savings to the Medicare program attributable to this final rule. We have estimated that the hospice rate reduction as required by section 4441 of the BBA, temporary increases in hospice care payments for FY 2001 and FY 2002 due to section 131 of BBRA, and a 5 percent increase in hospice payments due to section 321 of BIPA, would result in a net savings of $80 million for FY 1998–2002 and an overall net cost of $120 million for FY 1998–2007. Given that after FY 2001 the annual costs attributable to section 321 of BIPA exceed the annual savings attributable to section 4441 of BBA, there are net costs in the out-years attributable to these two provisions. Below is a table indicating the year-by-year costs and savings attributable to the various provisions.

COSTS ASSOCIATED WITH THE VARIOUS HOSPICE PROVISIONS

FY	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
BBA Sec. 4441	−20	−40	−70	−90	−120	−130	−140	−140	−150	−160
BBRA Sec. 131	.....	.....	.....	10	20	.....	.....	.....	.....	
BIPA Sec. 321	.....	.....	.....	80	150	160	170	180	200	210
Total Costs	−20	−40	−70	0	50	30	30	40	50	50

All dollar figures are in millions and rounded to the nearest $10 million. Costs are shown as positive, savings as negative.
BBA Sec. 4441: Payments for Hospice Services.
BBRA Sec. 131: Temporary increase in payment for hospice care.
BIPA Sec. 321: 5% Increase in Payment.

Also, as discussed above, it is very difficult to estimate the size of any implementation costs to State Medicaid programs with optional Medicaid hospice benefits. However, it should be noted that the BBA provisions that State Medicaid programs are required to implement (rates of payment, payment based on location where care is furnished, other items and services, physician contracting) have been effective since August 5, 1997. Since that time, we have not received any correspondence from State Medicaid programs indicating that these provisions have had significant costs associated with implementation.

C. Alternatives Considered

Most sections of this final rule are mandated requirements of the BBA, BBRA, and BIPA, and have already been implemented by CMS Program Memoranda, published in the month after passage of the BBA, and the month after the passage of BIPA. BBRA changes only concerned hospice payment amounts but did not affect the basic law. Discharge for cause will enable us to implement policies that permit hospices to act in those rare events that indicate the need, but with protection for the beneficiary included in the rules. Alternatively, hospices may continue to address this particular problem without certainty as to their authority in these special situations. Other sections of this final rule represent current policies that have been implemented and recognized by the industry, clarification of current regulations, or suggested policies that the industry and CMS believe may help improve the Medicare hospice program.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

The general lack of hospice data and the unpredictable nature of hospice care have made it extremely difficult to predict the savings or costs associated with the changes contained in this final rule. However, we believe that these changes will create very little, if any, new economic or regulatory burdens on hospice providers. These changes are either statements of current policy or clarifications of policy that would benefit hospice providers. We believe that we have made every effort to mitigate the effects of these changes on hospice providers.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

■ For reasons set forth in this preamble, the Centers for Medicare & Medicaid Services amend 42 CFR chapter IV as follows:

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Eligibility, Election and Duration of Benefits

■ 2. In § 418.21, paragraph (a) is revised to read as follows:

§ 418.21 Duration of hospice care coverage—Election periods.

(a) Subject to the conditions set forth in this part, an individual may elect to receive hospice care during one or more of the following election periods:

(1) An initial 90-day period;

(2) A subsequent 90-day period; or

(3) An unlimited number of subsequent 60-day periods.

* * * * *

■ 3. In § 418.22, paragraphs (a) and (b) are revised to read as follows:

§ 418.22 Certification of terminal illness.

(a) *Timing of certification*—(1) *General rule.* The hospice must obtain written certification of terminal illness for each of the periods listed in § 418.21, even if a single election continues in effect for an unlimited number of periods, as provided in § 418.24(c).

(2) *Basic requirement.* Except as provided in paragraph (a)(3) of this section, the hospice must obtain the written certification before it submits a claim for payment.

(3) *Exception.* If the hospice cannot obtain the written certification within 2 calendar days, after a period begins, it must obtain an oral certification within 2 calendar days and the written certification before it submits a claim for payment.

(b) *Content of certification.* Certification will be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. The certification must conform to the following requirements:

(1) The certification must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course.

(2) Clinical information and other documentation that support the medical prognosis must accompany the certification and must be filed in the medical record with the written certification as set forth in paragraph (d)(2) of this section. Initially, the clinical information may be provided verbally, and must be documented in the medical record and included as part of the hospice's eligibility assessment.

* * * * *

■ 4. In § 418.24, paragraph (c) is revised to read as follows:

§ 418.24 Election of hospice care.

* * * * *

(c) *Duration of election.* An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual—

(1) Remains in the care of a hospice;

(2) Does not revoke the election; and

(3) Is not discharged from the hospice under the provisions of § 418.26.

* * * * *

■ 5. New § 418.25 and § 418.26 are added to read as follows:

§ 418.25 Admission to hospice care.

(a) The hospice admits a patient only on the recommendation of the medical director in consultation with, or with input from, the patient's attending physician (if any).

(b) In reaching a decision to certify that the patient is terminally ill, the hospice medical director must consider at least the following information:

(1) Diagnosis of the terminal condition of the patient.

(2) Other health conditions, whether related or unrelated to the terminal condition.

(3) Current clinically relevant information supporting all diagnoses.

§ 418.26 Discharge from hospice care.

(a) *Reasons for discharge.* A hospice may discharge a patient if—

(1) The patient moves out of the hospice's service area or transfers to another hospice;

(2) The hospice determines that the patient is no longer terminally ill; or

(3) The hospice determines, under a policy set by the hospice for the purpose of addressing discharge for cause that meets the requirements of paragraphs (a)(3)(i) through (a)(3)(iv) of this section, that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired. The hospice must do the following before it seeks to discharge a patient for cause:

(i) Advise the patient that a discharge for cause is being considered;

(ii) Make a serious effort to resolve the problem(s) presented by the patient's behavior or situation;

(iii) Ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; and

(iv) Document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into its medical records.

(b) *Discharge order.* Prior to discharging a patient for any reason listed in paragraph (a) of this section, the hospice must obtain a written physician's discharge order from the hospice medical director. If a patient has an attending physician involved in his or her care, this physician should be consulted before discharge and his or her review and decision included in the discharge note.

(c) *Effect of discharge.* An individual, upon discharge from the hospice during a particular election period for reasons other than immediate transfer to another hospice—

(1) Is no longer covered under Medicare for hospice care;

(2) Resumes Medicare coverage of the benefits waived under § 418.24(d); and

(3) May at any time elect to receive hospice care if he or she is again eligible to receive the benefit.

(d) *Discharge planning.* (1) The hospice must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill.

(2) The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

Subpart F—Covered Services

■ 6. In § 418.202, the introductory text is republished, and a new paragraph (i) is added to read as follows:

§ 418.202 Covered services.

All services must be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

* * * * *

(i) Effective April 1, 1998, any other service that is specified in the patient's plan of care as reasonable and necessary for the palliation and management of the patient's terminal illness and related conditions and for which payment may otherwise be made under Medicare.

Subpart G—Payment for Hospice Care

■ 7. Section 418.301 is amended by adding a new paragraph (c) to read as follows:

§ 418.301 Basic rules.

* * * * *

(c) The hospice may not charge a patient for services for which the patient is entitled to have payment made under Medicare or for services for which the patient would be entitled to payment, as described in § 489.21 of this chapter.

■ 8. Section 418.302 is amended by adding a new paragraph (g) to read as follows:

§ 418.302 Payment procedures for hospice care.

* * * * *

(g) Payment for routine home care and continuous home care is made on the basis of the geographic location where the service is provided.

§ 418.304 [Amended]

■ 9. In § 418.304, the following changes are made:

■ a. In paragraph (b), the phrase ''physician's reasonable charge'' is

removed and is replaced with ''physician fee schedule.''

■ b. In paragraph (c), the phrase ''subparts D or E, part 405 of this chapter'' is removed and the phrase ''subpart B, part 414 of this chapter'' is added in its place.

■ 10. In § 418.306, the introductory text of paragraph (b) is republished, paragraph (b)(3) is revised, and new paragraphs (b)(4) and (b)(5) are added to read as follows:

§ 418.306 Determination of payment rates.

* * * * *

(b) *Payment rates.* The payment rates for routine home care and other services included in hospice care are as follows:

* * * * *

(3) For Federal fiscal years 1994 through 2002, the payment rate is the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase minus—

(i) 2 percentage points in FY 1994;

(ii) 1.5 percentage points in FYs 1995 and 1996;

(iii) 0.5 percentage points in FY 1997; and

(iv) 1 percentage point in FY 1998 through FY 2002.

(4) For Federal fiscal year 2001, the payment rate is the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase plus 5 percentage points. However, this payment rate is effective only for the period April 1, 2001 through September 30, 2001. For the period October 1, 2000 through March 31, 2001, the payment rate is based upon the rule under paragraph (b)(3)(iv) of this section. The payment rate in effect during the period April 1, 2001 through September 30, 2001 is considered the payment rate in effect during fiscal year 2001.

(5) The payment rate for hospice services furnished during fiscal years 2001 and 2002 is increased by an additional 0.5 percent and 0.75 percent, respectively. This additional amount is not included in updating the payment rate as described in paragraph (b)(3) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 24, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 11, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–23078 Filed 11–21–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

49 CFR Part 10

FAA Accident and Incident Data System Records Expunction Policy

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: The Federal Aviation Administration (FAA) has adopted a policy which, when implemented, will result in the expunction of airman identities from certain FAA accident and incident records.

DATES: This policy is effective November 22, 2005, with implementation as discussed herein.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, Aeronautical Center (AMC–7), Federal Aviation Administration, 6500 S. MacArthur, Oklahoma City, OK 73169. Telephone (405) 954–3296.

SUPPLEMENTARY INFORMATION:

Background

Under sections 40101, 40113, and 44701 of the U.S. Transportation Code, as amended, 49 U.S.C. 40101, 40113 and 44701, the FAA may maintain records of aviation accidents and incidents containing identifying information of individual airmen if safety in air commerce or air transportation and the public interest require. These records include all accidents that were investigated by the FAA and incidents reported to or investigated by the FAA. Part 10 of the Department of Transportation Regulations, 49 CFR 10.1 *et seq.,* sets forth the conditions for maintenance and access to records pertaining to individuals.

Presently, written accident and incident records are destroyed in accordance with the applicable retention guidelines contained in FAA Order 1350.15C. Certain essential information is extracted from written accident and incident records and maintained in the Accident and Incident Data System (AIDS).

Currently, computer based electronic AIDS records are maintained indefinitely by the FAA. The custodian of AIDS is the Aviation Data Systems Branch, AFS–620, at the Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma. AIDS records may be accessed by FAA personnel at the FAA's Headquarters in Washington, DC and the FAA's field and regional offices. See, System of Records DOT/FAA 847, 65 FR 19527 (April 11, 2000). One of the reasons the FAA maintains these records is for safety related statistical research. Aviation Safety Inspectors may also use these records to determine whether an airman should be re-examined. AIDS records are considered to be basic qualification information and may be released to the public pursuant to the routine uses listed in DOT/FAA 847.

In 1989, the FAA conducted a System Safety and Efficiency Review (SSER) of its General Aviation Compliance and Enforcement Programs. The SSER review team comprised both FAA personnel and representatives of various industry organizations, including the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, and the National Business Aircraft Association. The establishment of an accident and incident expungement policy was one of the many topics discussed during the System Safety and Efficiency Review. However, no accident and incident expungment policy was implemented at that time.

From 1996 until the present, the FAA has expunged the identity of airmen from AIDS records on an ad hoc basis, where it was determined that their identity no longer served a relevant purpose. Those determinations were made in response to individual requests for correction of accident or incident record pursuant to the Privacy Act, 5 U.S.C. 552a. Absent a request for correction of records under the Privacy Act, the record remained in AIDS indefinitely. There has been growing concern within the FAA that this practice is unfair to those airmen who do not know their identity may be removed from an AIDS record by making a request under the Privacy Act.

In 2003, the FAA reevaluated its policy of indefinitely retaining AIDS records on individuals, and subsequently adopted a policy of expunging certain electronic AIDS records. This policy is explained in detail herein. This policy applies to individuals who have been identified in electronic AIDS records. This policy applies to individuals who hold airman certificates, as well as to those who do

not, such as passengers. This policy does not apply to the following:

Identities of air carriers, repair stations, or other organizational entities whether or not the air carrier, repair station or other organizational entity is owned or operated by an individual; records generated or maintained by entities other than the FAA such as electronic records of accidents and/or incidents maintained by the National Transportation Safety Board; this policy does not apply to written records of accidents or incidents because it is the FAA's current policy to destroy those records pursuant to the retention guidelines contained in FAA Order 1350.15C.

This policy statement is published because the subject is a matter of general interest in the aviation community.

FAA Recordkeeping

The FAA maintains records of accidents and incidents in the Accident and Incident Data System (AIDS), and with paper documents. All records contain identifying information such as name, date of birth, and certificate number. The records also contain information about each accident or incident such as the date and place of the event as well as a description of what happened.

AIDS is an automated data base system that contains summaries of all FAA accident and incident investigations. Copies of paper documents associated with an accident or incident are not included in AIDS records. AIDS is the primary source of summary information for the FAA and the public concerning any accident or incident investigated by the FAA.

Expunction Policy

Electronic accident and incident records identifying an individual will now be maintained for five years from the date of the accident or incident. In that regard, it is believed that after five years, any information about an individual's identity will be of little, if any, value. Under this expunction policy, any information which identifies the individual will be removed from the AIDS record, including the individual's name and FAA certificate number. The case report number will not be removed, nor will the rest of the information, such as the pilot's experience, the description of the event, the N number and type of aircraft involved. This information will be maintained so that the FAA will be able to research the accident history of an aircraft or conduct statistical research of data.

In all cases, if at the time an AIDS record is due to be expunged, a subsequent AIDS record has been opened, the first record will not be expunged unless and until the subsequent record is eligible for expungement.

Implementation of the AIDS Expunction Policy

The FAA currently has several decades of records which will be expunged under this policy. It is expected that the initial expunction of eligible AIDS records will be completed in stages.

Changes will be made to the AIDS program so that AIDS data eligible to be expunged is identified and automatically expunged from the AIDS computer base. The FAA expects that the necessary hardware and software changes to the AIDS data base system will be completed by [November 1, 2005].

Once this expunction system is fully functioning, the FAA intends to expunge identifying information from eligible AIDS records on a monthly basis. An individual may expect his or her AIDS records to be expunged during the month following the eligibility for expunction under this policy. The FAA maintains a large number of records in AIDS. Therefore, it is impossible for the Agency to assure the expunction of any particular record in strict accordance with this policy. If an individual becomes aware of any AIDS data eligible for expunction that has not been expunged, he or she may request amendment of the record under the Privacy Act, 5 U.S.C. 552a(d). Any request to amend an individual's AIDS record must be made in writing to the systems manager in accordance with the procedures prescribed in 49 CFR part 10.

Issued in Washington, DC on November 17, 2005.

Marion Blakey,

Administrator.

[FR Doc. 05–23101 Filed 11–21–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 050719189–5286–03; I.D. 071405C]

RIN 0648–AT33

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2005 and 2006 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement the 2005 and 2006 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna in the ETP will be closed for a 6–week period beginning November 20, 2005, through December 31, 2005, and beginning November 20, 2006, through December 31, 2006. In this final rule, NMFS also announces that the longline fishery will close when a 150–mt limit has been reached. These actions are taken to limit fishing mortality on tuna stocks caused by purse seine fishing and longline fishing in the Convention Area and contribute to the long-term conservation of tuna stocks at levels that support healthy fisheries.

DATES: The 2005 tuna purse seine fishery closure is effective November 20, 2005, through December 31, 2005. The 2006 tuna purse seine fishery closure is effective November 20, 2006, through December 31, 2006. For 2006, the bigeye longline fishery will close when the bigeye tuna catch reaches 150 mt. NMFS will publish a notification in the **Federal Register** announcing the effective date of that closure.

ADDRESSES: Copies of the regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90902–4213.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, Sustainable Fisheries

Division, Southwest Region, NMFS, (562) 980–4030.

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.gpoaccess.gov/*.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. For the purposes of these closures, the Convention Area is defined to include the waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of tuna stocks and promote viable fisheries.

Under the Tuna Conventions Act, 16 U.S.C. 951–962, NMFS must publish regulations to carry out IATTC recommendations and resolutions that have been approved by DOS. A proposed rule to carry out the IATTC-recommended and DOS-approved closures for the ETP purse seine and longline tuna fisheries for 2005 and 2006 was published in the **Federal Register** on August 15, 2005 (70 FR 47774). The Southwest Regional Administrator also is required by regulations at 50 CFR 300.25(b)(3) to issue a direct notice to the owners or agents of U.S. vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS. In May 2005 and September 2005, the Regional Administrator, Southwest Region, sent notices to owners and agents of U.S. fishing vessels describing the actions recommended by the IATTC June 2004 Resolution and approved by the DOS.

At the June 2004 IATTC meeting, a new resolution was adopted by the Commission. The June 2004 resolution offers Parties a choice for closing the purse seine fishery in the Convention Area: either a 6–week closure beginning August 1, or a 6–week closure beginning November 20. The closure will target fishing activity that results in high catches of juvenile tuna.

The June 2004 resolution also calls upon each Party and cooperating non-Party to take measures necessary to ensure that each nation's longline catch of bigeye tuna in the Convention Area during 2005 and 2006 will not exceed the total longline catch by the nation in the Convention Area in 2001. The U.S. catch level for 2001 is estimated to have been 150 mt in the Convention Area. This final rule allows the United States to comply with the June 2004 resolution.

The IATTC action at the June 2004 meeting came after considering a variety of measures, including the use of quotas and partial fishery closures as implemented in 1999 through 2002 and the full month purse seine closure used in 2003. The resolution of June 2004 incorporated flexibility for nations to administer the purse seine closure in accordance with national legislation and national sovereignty. The selected measures should provide protection against overfishing of the stocks in a manner that is fair, equitable, and readily enforceable. The DOS has approved the IATTC recommendations.

The conservation and management measures are based on 2004 assessments of the condition of the tuna stocks in the ETP and historic catch and effort data for different portions of the ETP, as well as records relating to implementation of quotas and closures in prior years. The measures are believed by the IATTC to be sufficient to reduce the risk of overfishing of tuna stocks. The IATTC met in June 2005 and reviewed new tuna stock assessments and fishery information and considered the new assessment and fishery stock assessment information. In evaluating possible management measures for 2004 and future years, the IATTC selected a multi-annual time/area approach to conserve and manage the tuna stocks in the Convention Area.

This final rule implements the 6–week closure to purse seining in the Convention Area beginning November 20, 2005, and beginning November 20, 2006. These closures were chosen in response to comment supportive of this closure period rather than the period beginning on August 1. This final rule also provides that the U.S. longline fishery for bigeye tuna in the Convention Area will close for the remainder of the calendar year 2006 if the catch reaches 150 mt, the catch level of 2001. If necessary, this closure will prohibit U.S. longline bigeye tuna vessels from retaining bigeye tuna in the Convention Area. Longline vessels will not be subjected to this closure if the permit holder declares to NMFS under the Fishery Management Plan (FMP) for the Pelagic Fisheries of the Western Pacific Region that they intend to shallow-set to target swordfish (50 CFR 660.23). NMFS will provide notice of closure of the longline fishery. These actions ensure that U.S. vessels fish in accordance with the conservation and management measures that the IATTC recommended in June 2004.

On September 2, 2005, NMFS determined that the 150 mt-catch level had been reached for the 2005 season and closed the U.S. longline fishery for bigeye tuna in the IATTC Convention Area under an emergency rule (70 FR 52324–52325). This closure prohibited U.S. longline bigeye tuna vessels from retaining bigeye tuna in the Convention Area. Longline vessels were not subject to the emergency rule if the permit holder declared to NMFS under the FMP for the Pelagic Fisheries of the Western Pacific Region that they intend to shallow-set to target swordfish (50 CFR 660.23).

Comments and Responses

During the comment period for the proposed rule, NMFS received comments from tuna industry organizations, environmental organizations, members of the public, and the Western Pacific Fishery Management Council (Western Pacific Council). Key issues and concerns are summarized below and responded to as follows:

Timing of the Closures

Comment 1: Comments were received that vessel owners support the closure period set forth in the proposed rule. The vessel owners have two specific reasons for preferring the year-end closure. First, the weather conditions on the high seas and in the Convention Area at year-end are normally more problematic than during the August-September period. Fishing conditions are affected by weather, and the vessel owners would prefer that the closure not take place during the period when the weather is least likely to adversely affect fishing. Second, there is currently a short supply of fish, and fish prices have finally begun to return to levels that support economically profitable fishing. A mid-year closure could prevent U.S. vessels from capitalizing on this opportunity. Finally, a later closure allows better opportunity for planning operations and scheduling repairs and maintenance during the closure. For these reasons U.S. vessel owners would prefer to delay the closure until later in the year.

Response: NMFS has decided to implement the late closure supported by industry for the reasons presented.

Comment 2: One commenter expressed a preference for the August 1

through September 11, 2005, closure. This commenter stated that his/her businesses would be economically disadvantaged by the later closure.

Response: NMFS considered this closure. However, the overwhelming majority of commenters favored of the 6–week closure beginning November 20. For the reasons stated in Comment 1, NMFS has chosen to implement the later closure. The impacts discussed in the RIR are the same under both closure options.

2001 U.S. Longline Catch

Comment 3: It is probably wrong to assume that the catch of bigeye in the ETP by U.S. flagged longline vessels is no more than 150 mt.

Response: NMFS has concluded that the catch in 2001 was 150 mt. In 2004, NMFS scientists evaluated the U.S. longline catch of bigeye tuna for 2001. NMFS scientists estimated the longline bigeye tuna catch east of 150° W. meridian by multiplying the numbers of fish reported as retained in log books from the Hawaii and California based longline fleets times the mean weight of bigeye tuna from the Hawaii-based longline fishery. Three data sets were used to estimate bigeye catches east of 150° W. meridian. These were the Hawaii-based longline logbook data (1999–2003), the Honolulu market sample data (1999), and the State of Hawaii Fish Dealer Data (2000–2003). In addition, U.S. flagged longline vessels operate out of California and catch bigeye tuna east of 150° W. These vessels are required to fill in either the NMFS Western Pacific Daily Longline Fishing Log or High Seas Pelagic Longline Logs and submit them to the NMFS Southwest Regional Office in Long Beach, California. These logbook data provide fishing location and catch by species. The estimated U.S. longline bigeye tuna catch was 150 mt in 2001. The relatively low yields in 2001 and 2002 were probably caused by constrained fishing patterns that reflected regulatory initiatives to the U.S. longline fleet targeting swordfish in the ETP.

Comment 4: Why were the 2001 levels used and not earlier years that may be more indicative of U.S. historical catches?

Response: The IATTC Secretariat recommended and the IATTC chose the year 2001 for the bigeye longline benchmark because this was the most recent year that nations party to or cooperating with the IATTC were able to supply a complete annual data set and because this represented the last year before a substantial increase in eastern Pacific longline fishing. Parties to the IATTC wanted to limit longline effort to this lower level.

Bigeye Longline Quota

Comment 5: Several comments received stated that the longline bigeye tuna limit would be unfair to U.S. interests.

Response: At the June 2005 IATTC annual meeting, the U.S. delegation lobbied for relief for our U.S. interests for the longline bigeye tuna fishery. The U.S. delegation was not successful in persuading all other IATTC member nations to amend the June 2004 Resolution. NMFS and the DOS continue to hear from constituents that the current longline bigeye tuna limit is unfair to U.S. interests. NMFS appreciates these concerns and has taken these concerns to the U.S. delegation. The U.S. delegation will continue to work through the proper channels towards balanced treatment for the U.S. longline bigeye tuna fleet within the bounds of the IATTC consensus-based process.

Comment 6: NMFS does not have a timely system for collection and processing of longline catch data so that the industry can be given an advance notification of a prospective closing date for the longline fishery in the ETP.

Response: The NMFS Pacific Islands Regional Office will collaborate with the U.S. longline bigeye tuna industry in developing a more efficient monitoring program for 2006.

Comment 7: NMFS is aware that the longline bigeye tuna quota of 150 mt was exceeded in both 2004 and 2005. This clearly indicates that there is additional demand beyond 150 mt.

Response: NMFS is aware that the longline bigeye tuna quota of 150 mt was exceeded in both years. As a solution to exceeding the quota, NMFS Pacific Islands Regional Office will collaborate with the U.S. longline bigeye tuna industry in developing a more efficient monitoring program for 2006. While exceeding the quota could be indicative of additional demand beyond 150 mt, the IATTC June 2004 Resolution did not give NMFS discretion to increase the U.S. quota beyond 150 mt. At the June 2005 annual meeting of the IATTC, the U.S. delegation was not successful in persuading all other IATTC member nations to amend the June 2004 Resolution.

Comment 8: A commenter asked who conducted the analysis on which the initial estimate of 100 mt of bigeye tuna was based and questioned if it was based on the best available data. Further, the commenter wanted to know what protocols govern the monitoring of U.S. longline bigeye catches in the IATTC area, and which NMFS office is taking the lead on this issue. The commenter requested NMFS communicate better on issues within the Convention Area that may affect fisheries by vessels based different regions.

Response: The initial estimate of 2001 U.S. longline catch of bigeye tuna in the Convention Area was derived by the NMFS Southwest Region using landings and log book data from both Hawaii and California. While the preliminary estimate of the U.S. catch in 2001 was 100 mt, after receiving public comments in 2004, NMFS reviewed the initial estimate and made adjustments based on a sound statistical basis. NMFS will implement a protocol for monitoring U.S. longline bigeye catches in the IATTC Convention Area so that the fishery can be closed if the U.S. catch limit for 2006 is reached before the end of the year. This protocol for monitoring includes direct notice to fishing vessel owners and operators. The Southwest Region has the lead for collaborating with the DOS and constituents in implementing conservation recommendations of the IATTC. The Southwest Region recognizes that longline vessels based in Hawaii may fish in the Convention Area and thus could be affected by measures recommended by the IATTC and approved by DOS. The Southwest Region will increase its efforts to communicate with all stakeholders including the relevant fishery management councils, the Pacific Fishery Management Council (Pacific Council) and the Western Pacific Council, prior to IATTC meetings to ensure that the interests of all U.S. fisheries are considered in development of U.S. positions at IATTC. (The Pacific Council and the Western Pacific Council are two of eight regional fishery management councils established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for the purpose of developing FMPs to govern fisheries off the coasts of the United States.) As soon after IATTC meetings as practicable, the Southwest Region will inform the Pacific and Western Pacific Councils of IATTC actions that affect fisheries in the Councils' areas of concern. NMFS fully recognizes that the Pacific and Western Pacific Councils have roles as principals in highly migratory species fisheries management under the Magnuson-Stevens Act and is working to ensure that measures under international conventions are compatible and coordinated to the extent necessary.

Comment 9: One commenter stated that the longline requirements of the June 2004 IATTC Resolution pertain only to large-scale tuna longline vessels (LSTLV's)(greater than 24 meters in length).

Response: The June 2004 IATTC Resolution applies to ''longline vessels'' of all sizes. As an additional requirement, the June 2004 IATTC Resolution requires that nations with LSTLV's provide to the IATTC Director monthly catch reports of tuna harvested with longline gear.

General Comments

Comment 10: One organization stated that they had no opposition to the proposed closures and other elements of the proposed rule for restrictions on the tuna purse seine fishery or the longline fishery for bigeye tuna in the ETP for 2005 and 2006. This organization expressed their continuing concerns regarding conservation of tunas in the ETP and asked that NMFS continue to work towards multilateral solutions to the multilateral fisheries of this proposed rule. This organization stated that the June 2004 IATTC resolution does not address the full problem and overfishing will continue, with subsequent depletion of the stocks.

Response: NMFS thanks the organization for their support. NMFS agrees that the issues of conservation and management of the tuna stocks in the ETP need to be addressed multilaterally. Under the IATTC, NMFS and DOS will continue to work with the nations party to the IATTC to conserve and manage tuna stocks in the ETP.

Comment 11: One commenter asked that NMFS shut down tuna fisheries in the Pacific Ocean for 6 months. The commenter stated that the current proposal steals our children's heritage by commercial fishermen and greedy profiteers.

Response: The tuna fishery closures in the Pacific Ocean were negotiated on a multilateral basis and strike a balance between many competing interests. The measures are believed by the IATTC to be sufficient to reduce the risk of overfishing of tuna stocks.

Comment 12: NMFS received a comment regarding the number of current participants in the West Coast Longline Fishery. The commenter stated that our current number of participants was incorrect.

Response: NMFS agrees and has corrected this participant number in the final analysis. NMFS recognizes that this number could increase in the future and is not a static number.

Classification

This action is consistent with the Tuna Conventions Act, 16 U.S.C. 51–962. This action is consistent with the regulations governing the Pacific Tuna Fisheries at 50 CFR 300.25.

A 30–day delay in effectiveness is generally required under 5 U.S.C. 553(d)(3) for rules with substantive impact on the public. For the following reasons, the Assistant Administrator for Fisheries finds good cause to waive the 30–day delay in effectiveness of this rule. First, delaying closure of the U.S. tuna purse seine fishery in the ETP beyond November 20 would contravene the U.S. obligations to adhere to a binding resolution of the IATTC, and its obligations to manage tuna stocks in a sustainable manner under the Tuna Conventions Act. Second, delaying the effectiveness of this rule may result in the U.S. purse seine vessels continuing to fish in the ETP after November 20, thereby placing further pressure on tuna stocks. That said, beginning in 2004, NMFS gave actual notice of this closure several times to each of the vessel owners and operators affected by this closure; NMFS will also provide each owner with a copy of this **Federal Register** document.

On December 8, 1999, NMFS prepared a biological opinion (BO) assessing the impacts of the fisheries as they would operate under the interim final regulations implementing the International Dolphin Conservation Program Act (IDCPA)65 FR 47, January 3, 2000). In this BO, NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. Because this closure does not alter the scope of the fishery management regime analyzed in the IDCPA rule, or the scope of the impacts considered in that consultation, NMFS is relying on that analysis to conclude that this final rule will have no different effect than what was concluded in the BO.

On October 4, 2005, NMFS concluded that the Hawaii-based pelagic, deep-set, tuna longline fishery managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This final rule will not result in any changes in the fishery such that there would be impacts beyond those considered in that BO. Therefore, NMFS has determined that additional ESA consultation is not required for this action.

Under its Consolidated Resolution on Bycatch, the IATTC has adopted conservation measures to reduce sea turtle injury and mortality from interactions in the purse seine fishery. As a result, impacts of the fisheries on sea turtle injury and mortality should be lower than in the past. NMFS has implemented the IATTC conservation measures to reduce sea turtle injury and mortality at 50 CFR 300.25(e).

A FRFA was prepared that describes the economic impact of this final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**). Comments were received on the initial regulatory flexibility analysis for the proposed rule. The comments have been addressed and are reflected in the FRFA for this final rule and in the summary below. A summary of the analysis follows.

A statement of the need for, and objectives of, the rule is provided in the **SUPPLEMENTARY INFORMATION** section above.

Small vessels, purse seine or longline, are categorized as small business entities (revenues below $3.5 million per year).

This action would prohibit the use of purse seine gear to harvest tuna in the ETP for a 6–week period beginning November 20, through December 31, for both the 2005 and 2006 calendar years and limit the annual 2006 U.S. catch of bigeye tuna caught by longline in the ETP to 150 metric tons.

The purse seine closure applies to the U.S. tuna purse seine fleet, which consists of 10–20 small vessels (carrying capacity below 400 short tons (363 metric tons)) and 4–6 large vessels (carrying capacity 400 short tons (363 metric tons) or greater).

The small purse seine vessels fish out of California in the U.S. exclusive economic zone most of the year for small pelagic fish (Pacific sardine, Pacific mackerel) and for market squid in summer. Some small vessels harvest tuna seasonally when they are available. NMFS believes that the time/area closure will have no effect on small purse seine vessels because they do not have the endurance and markets to fish that far from their coastal home ports.

The large purse seine vessels usually fish outside U.S. waters and deliver their catch to foreign ports or transship to processors outside the mainland United States. The large vessels are categorized as large business entities (revenues in excess of $3.5 million per year). A large purse seine vessel

typically generates 4,000 to 5,000 metric tons of tuna valued at between $4 and $5 million per year. The closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open.

The 2004 IATTC Tuna Convention Resolution offers each country a choice for closing the fishery for a 6–week period beginning either August 1 or November 20, of each of the years in 2004, 2005, and 2006. NMFS considered the alternative of the 6–week closure beginning on August 1, but based on public comments on the proposed rule in 2005, NMFS chose the 6–week closures to begin on November 20, 2005 and November 20, 2006. In particular, the U.S. purse seine fleet prefers a closure later in the fishing year because the winter weather is not conducive to fishing. Also, throughout the history of this fishery shipyards are prepared to accept vessels for scheduled repairs during the winter months. The fishery closure later in the year allows the industry to plan for and mitigate economic impacts while still providing the conservation benefits to the tuna resources in the ETP. NMFS also considered the ''no action'' alternative of not implementing a purse seine closure, which would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed on pursuant to this Convention would violate the United States' obligations under the Convention and the Tuna Conventions Act.

The U.S. longline fishery for bigeye tuna in the ETP is relatively small. Vessels in the fishery are characterized as small business entities, the majority of which are based in Hawaii. The Hawaii fleet (approximately 120 active vessels) has pursued a mix of swordfish targeting, tuna targeting, and mixed trip fishing. While the fleet usually fishes west of the ETP, there have been trips into the ETP or in which a portion of the effort was deployed in the ETP. Based on logbook data analyses, NMFS has determined that the catch of bigeye in the ETP in 2001 was 150 mt. In 2003, a total of 49 Hawaii and California based longline vessels made 92 whole or partial trips east of 150° W. long. landing 232 mts of bigeye tuna. In 2004, 52 longline vessels made 87 whole or partial trips landing 158 mts of bigeye tuna. NMFS recognizes that this closure places a hardship on this fishery. Overall, a closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open, outside the boundaries of the IATTC Convention Area. NMFS recognizes that this closure places a further hardship on the West Coast fishery because of the difficulties involved in traveling outside the boundaries of the IATTC Convention Area for bigeye tuna.

NMFS considered the ''no action'' alternative of not implementing the longline closure provided in the 2004 IATTC Tuna Convention Resolution. This alternative would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed on pursuant to this Convention would violate the United States' obligations under the Convention, and would violate the Tuna Conventions Act. The IATTC did not provide for alternatives in setting the 150 mt bigeye quota, which was approved by the DOS. As a result, NMFS has no discretion to refrain from promulgating the quota. Further, the Tuna Conventions Act does not provide authority for the Untied States to take independent action to conserve and manage fisheries subject to management under the IATTC Convention.

For both the purse seine and the longline tuna fisheries, the closures will have a temporary impact as vessels can return to the fishery on January 1.

This rule does not impose any new reporting or recordkeeping requirements.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 951–962. and 971 *et seq.*

Dated: November 15, 2005.

James W. Balsiger,

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

[FR Doc. 05–22991 Filed 11–17–05; 1:24 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 111705A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 total allowable catch (TAC) of Pacific cod specified for catcher/processor vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 17, 2005, until 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific cod TAC allocated to catcher/processor vessels using pot gear in the BSAI is 3,352 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the reallocation on October 5, 2005 (70 FR 58983, October 11, 2005). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod TAC allocated to catcher/processor vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries

data in a timely fashion and would delay the closure of Pacific cod by catcher/processor vessels using pot gear in the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 17, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23095 Filed 11–17–05; 1:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 224
Tuesday, November 22, 2005

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

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21175; Directorate Identifier 2005–CE–24–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 58P and 58TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) Models 58P and 58TC airplanes used as a lead airplane by the United States Forest Service. This proposed AD would require you to insert a new supplement into the Limitations Section of the Pilot's Operating Handbook and Airplane Flight Manual (POH/AFM) that establishes new limits for the structural life of the airframe (wing, fuselage, empennage, or associated structure); and dispose of the life-limited airframe following 14 CFR 43.10 when the limit of the structural life of the airframe is reached. This proposed AD results from Raytheon issuing a POH/AFM supplement that establishes the structural life limit of 4,500 hours time-in-service (TIS) for the airframe (wing, fuselage, empennage, and associated structure) for any Models 58P and 58TC airplanes used as a lead airplane by the United States Forest Service; and FAA's determination that the structural life limit is necessary. We are issuing this proposed AD to prevent cumulative fatigue damage and fatigue cracking damage that would sufficiently reduce residual strength of the airframe and result in failure. Failure of the airframe (wing, fuselage, empennage, or associated structure) could lead to loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by January 23, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* The docket number is FAA–2005–21175; Directorate Identifier 2005–CE–24–AD.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–21175; Directorate Identifier 2005–CE–24–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–21175; Directorate Identifier 2005–CE–24–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Docket Information

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

Discussion

What events have caused this proposed AD? The type certificate of the Models 58P and 58TC airplanes establishes (in the Limitations Section of the FAA Approved Airplane Flight Manual) a structural life limit of 10,000 hours time-in-service (TIS). This life limit was established by using the standard and expected usage for normal twin-engine usage envelopes and industry standard approaches for fatigue testing and analysis, structural fatigue analysis reports, ground structural

fatigue test reports, and flight test fatigue spectrum monitoring reports.

The United States Forest Service (USFS) bought the 21 airplanes identified in this NPRM for use as lead airplanes for the forest firefighting mission. Operation in the lead airplane firefighting mission is a more severe usage than the normal usage of twin-engine aircraft.

In October 2004, the USFS informed FAA that it was to dispose of these airplanes through the General Services Administration (GSA).

In January 2005, Raytheon issued a supplement for the Limitations Section of the Pilot's Operating Handbook and Airplane Flight Manual (POH/AFM) that reduces the original type certification structural fatigue life limit to 4,500 hours TIS. The latest revisions of the analytical reports by Raytheon and USFS are dated July 1984.

The FAA has determined that if flight operations continue beyond 4,500 hours TIS, then the cumulative fatigue damage on these airplanes will reach a point at which fatigue cracking might occur. This damage will reduce residual strength and deplete all useful service life.

Operation of these airplanes in a severe fatigue-loading spectrum accelerates the cumulative fatigue damage. This higher fatigue damage accumulation rate experienced by the USFS (operation in the lead airplane firefighting mission) is higher than normal usage and results in a shorter life limit. The severity of the usage by the USFS reduced the structural life limit.

The Service Difficulty Reports (SDR) database indicates some wing skin cracking, pressure bulkhead cracking, and cracking in both the vertical and horizontal stabilizers. A significant number of these cracking occurrences were on the subject airplanes. We believe that the SDR database does not reflect all such occurrences on the subject airplanes.

What is the potential impact if FAA took no action? Cumulative fatigue damage causing fatigue cracking damage would sufficiently reduce the residual strength of the airframe. Failure of the airframe (wing, fuselage, empennage, or associated structure) could lead to failure with a consequent loss of control of the airplane.

Is there service information that applies to this subject? Raytheon has issued Beechcraft Model 58P/58PA and Model 58TC/58TCA Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) Supplement, part number (P/N) 102–590000–67, issued January 2005.

This supplement affects Models 58P and 58TC airplanes used as a lead airplane by the USFS with these serial numbers: TJ–177, TJ–178, TJ–180, TJ–211, TJ–213, TJ–247, TJ–284, TJ–285, TJ–289, TJ–290, TJ–314, TJ–322, TJ–367, TJ–368, TJ–370, TJ–371, TJ–425, TJ–426, TJ–433, TJ–442, and TK–33.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to:

—Insert the Raytheon Aircraft Company Beechcraft Model 58P/58PA and Model 58TC/58TCA POH/AFM Supplement, part number (P/N) 102–590000–67, issued January 2005, into the Limitations Section of the POH/AFM (P/N 102–590000–41 or 106–590000–5). This limits the structural life of the airframe (wing, fuselage, empennage, and associated structure) to 4,500 hours time-in-service (TIS); and

—Dispose of the life-limited airframe (wing, fuselage, empennage, and associated structure) following 14 CFR 43.10 when the limit (4,500 hours TIS) of the structural life of the airframe is reached.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 21 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to incorporate the Raytheon Aircraft Company Beechcraft Model 58P/58PA and Model 58TC/58TCA POH/AFM Supplement into the POH/AFM:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 per hour = $65	Not applicable	$65	$1,365

We estimate the cost to dispose of the life-limited airframe (wing, fuselage, empennage, and associated structure) following 14 CFR 43.10 (when the limit of the structural life of the airframe is reached) to be the cost of each airplane.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

Would this proposed AD impact various entities? 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.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–21175; Directorate Identifier 2005–CE–24–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the 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 (AD):

Raytheon Aircraft Company: Docket No. FAA–2005–21175; Directorate Identifier 2005–CE–24–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by January 23, 2006.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models 58P and 58TC airplanes, with the following serial numbers: TJ–177, TJ–178, TJ–180, TJ–211, TJ–213, TJ–247, TJ–284, TJ–285, TJ–289, TJ–290, TJ–314, TJ–322, TJ–367, TJ–368, TJ–370, TJ–371, TJ–425, TJ–426, TJ–433, TJ–442, and TK–33, that are certificated in any category. These airplanes were utilized as lead airplanes by the United States Forest Service for firefighting missions.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of Raytheon issuing a Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) Supplement that establishes the structural life of 4,500 hours time-in-service (TIS) for the airframe (wing, fuselage, empennage, and associated structure), and FAA's determination that the structural life is necessary. The actions specified in this AD are intended to prevent cumulative fatigue damage and fatigue cracking damage that would sufficiently reduce residual strength of the airframe and result in failure. Failure of the airframe (wing, fuselage, empennage, or associated structure) could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Insert the Raytheon Aircraft Company Beechcraft Model 58P/58PA and Model 58TC/58TCA Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) Supplement, part number (P/N) 102–590000–67, issued January 2005, into the POH/AFM (P/N 102–590000–41 or 106–590000–5). The Limitations Section limits the structural life of the airframe (wing, fuselage, empennage, and associated structure) to 4,500 hours time-in-service (TIS).	Upon the accumulation of 4,500 hours TIS on the airframe (wing, fuselage, empennage, or associated structure) or prior to further flight, whichever occurs later, unless already done.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may modify the POH as specified in paragraph (e)(1) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Dispose of the life-limited airframe (wing, fuselage, empennage, and associated structure) following 14 CFR 43.10 when the limit of the structural life of the airframe is reached.	Upon the accumulation of 4,500 hours TIS on the airframe (wing, fuselage, empennage, or associated structure) or prior to further flight, whichever occurs later, unless already done.	Follow section 43.10 of the Federal Aviation Regulations (14 CFR 43.10).
(3) Do not operate any Models 58P and 58TC airplanes (with any serial number noted in paragraph (c) of this AD0 upon the accumulation of 4,500 hours TIS on the airframe (wing, fuselage, empennage, or associated structure).	As of the effective date of this AD	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Steven E. Potter, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2005–21175; Directorate Identifier 2005–CE–24–AD.

Issued in Kansas City, Missouri, on November 16, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23055 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22509; Airspace Docket No. 03–AWA–2]

RIN 2120–AA66

Proposed Modification of the St. Louis Class B Airspace Area; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the St. Louis, MO, (STL) Class B airspace area. Specifically, this action proposes airspace changes to contain large, turbine-powered aircraft operations to and from the new Runway 11/29 at the Lambert-St. Louis International Airport (KSTL), St. Louis, MO. The FAA is proposing this action to enhance safety and improve the management of aircraft operations in the KSTL terminal area. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: Comments must be received on or before January 6, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2005–22509 and Airspace Docket No. 03–AWA–2, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2005–22509 and Airspace Docket No. 03–AWA–2) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments and self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2005–22509 and Airspace Docket No. 03–AWA–2.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

Persons interested in being placed on the mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In August 1979, the FAA issued a final rule establishing the St. Louis, MO, Terminal Control Area (TCA). This area was later re-classified as a Class B airspace area as a result of the Airspace Reclassification Final Rule (56 FR 65638); however, this final rule did not alter the dimensions of the original TCA.

As part of the FAA's Operational Evolution Plan, a new runway is under construction at KSTL. The new runway (Runway 11/29) is designed to provide a 51% increase in airport capacity and is scheduled to be commissioned in April 2006. Aircraft conducting instrument operations to this new runway will frequently need to intercept instrument approaches outside the St. Louis Class B airspace area if the current Class B airspace area is not expanded. The proposed Class B airspace modification will address this matter.

Public Input

On February 26, 2004, informal public workshops were held at the St. Charles Municipal Airport, St. Charles, MO; the Creve Coeur Airport, Maryland Heights, MO; and the St. Louis-Downtown Airport, Cahokia, IL. These public workshops and meetings allowed interested parties an opportunity to present their views and offer suggestions regarding planned modifications to the STL Class B airspace area. All comments received during the workshops were considered and were then reviewed by the ad hoc committee.

Ad hoc Committee

The ad hoc committee, sponsored by the Missouri Department of Transportation (MDOT) Office of Aviation, was comprised of representatives from the MDOT, Aircraft Owners and Pilots association (AOPA), United States Pilots Association, Missouri Pilots Association, Greater St. Louis Business Aviation Association, Emerson Flight Operations, St. Charles County Airport, St. Charles Municipal Airport, Washington Airport, Scott Air Force Base, Mid-America Airport, St. Louis Downtown Airport, Creve Coeur Airport, St. Louis Metro-East Airport-Shafer Field, and the FAA's Gateway TRACON. The ad hoc committee met on October 2, 2003; January 22, 2004; and September 23, 2004. During these meetings, the FAA presented preliminary plans to modify the STL Class B airspace area and participants presented comments and recommendations regarding the planned modifications. All comments and recommendations received from the ad hoc committee were considered by the FAA in developing the modifications proposed in this NPRM.

The following is a summary of the final recommendations received from the ad hoc committee:

1. Limit the floor of the Class B airspace area over the Creve Coeur Airport to 1,700 feet mean sea level (MSL) and modify Class B airspace area boundaries to include geographical references where possible.

2. Expand Area A to the north/northwest of KSTL to contain large, turbine-powered aircraft departing KSTL. This expansion will not require moving the existing VFR flyway located to the north of the expansion.

3. Expand Area A to the west of KSTL and lower the vertical limits of Area B to the west of KSTL to contain large, turbine-powered aircraft conducting approaches to Runway 11 and departing Runway 29. This will require lowering the altitude of VFR flyways to the west of KSTL from below 2,000 feet MSL to below 1,700 feet MSL.

4. Lower a portion of Area D to the south of KSTL to contain large, turbine-powered aircraft that turn south after departing Runway 29.

5. Lower the floor of Area E from 3,500 feet MSL to 3,000 feet MSL to contain large, turbine-powered aircraft on a base leg to Runway 30R and conducting approaches to Runway 30L and Runway 30R at KSTL.

6. Change the boundary of the arrival extensions in the vicinity of the St. Louis Metro East/Schafer Airport.

7. Include an area in the vicinity of Foristell, Missouri, in the Class B airspace area.

All of the above ad hoc committee's recommendations were adopted.

Informal Airspace Meetings

To provide an additional opportunity for the public to express their opinion on the planned modifications, the FAA held three informal airspace meetings. The first two meetings were held on October 19, 2005 in Chesterfield, MO and the third meeting was held in Collinsville, IL, on October 20, 2005. As a result of these meetings, the FAA received seven written comments. Three of the written comments were supportive of planned modifications to the STL Class B airspace area; four of the written comments expressed concerns with regard to the planned modifications.

Of the four commenters opposed to the planned modifications, three commenters raised concerns about lowering the floor of Area A from 2,000 feet to 1,700 feet MSL. They stated that this change will adversely impact aircraft operations at the St. Charles Municipal Airport (3SQ). This matter was discussed at the informal airspace meetings and had been previously discussed by the ad hoc committee at the public workshops noted above. Because 3SQ is located 7.5 nautical miles (NM) from the approach end of Runway 11 and approximately 1.5 NM north of the extended final approach course, the FAA has determined that lowering the floor of Area A to 1,700 feet MSL is necessary to contain large, turbine-powered aircraft conducting approach procedures to the new Runway 11 within the STL Class B airspace area. Additionally, it should be noted that large, turbine-powered aircraft will not be operating at the base altitude of the St. Louis Class B airspace area. Also, because the traffic pattern altitude at 3SQ is 1,100 feet MSL, aircraft transiting the area may continue their practice of flying over the 3SQ traffic pattern at 1,600 feet MSL, while remaining clear of the St. Louis Class B airspace area.

Two commenters also expressed concern about the expansion of the Class B Surface area to the west-northwest of KSTL and the loss of the Missouri River as a geographical boundary. The FAA has determined that the modifications to the west-northwest of KSTL are necessary to contain large, turbine-powered aircraft arriving Runway 11 and departing Runway 29 within the St. Louis Class B Airspace. While the Missouri River will no longer define a boundary of the St. Louis Class B airspace area, the FAA believes that pilots may utilize Highway 94 or Route H as a geographical reference to identify the location of that boundary as well as using the Cardinal VOR/DME.

One of commenters, the City Administrator for the City of St. Charles also expressed concerns about increased noise and potential structural damage to the city's historical district. These environmental concerns were addressed in the Final Environmental Impact Statement for the St. Louis-Lambert International Airport Expansion Plan and are categorically excluded from Class B airspace actions by FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts.

In addition to the written comments, one news helicopter pilot verbally expressed concerns over access to areas within the proposed surface area. FAA representatives attending the meetings expressed a willingness to work with local helicopter operators to mitigate this impact.

The chairman of the ad hoc committee was briefed on comments received as a result of the informal airspace meetings. He stated that comments received would not require any further action on behalf of the ad hoc committee.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the STL Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to expand the Area A, Area B, Area C, and Area D to improve the containment of large, turbine-powered aircraft operating within the STL Class B airspace area.

The following are the proposed revisions for each area of the STL Class B airspace area:

Area A. Expand the lateral limits of Area A to the northwest and southwest of KSTL.

Area B. Expand the lateral limits of Area B to the west-northwest of KSTL.

Area C. Modify the lateral limits of Area C by eliminating a portion to the west-northwest of KSTL that will be included in new Area B.

Area D. Modify Area D by reducing the lateral limits to that portion of the current Area D that lies within the 10-NM arc of Cardinal (Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) to the south of KSTL and lower the floor from 3,000 feet MSL to 2,500 feet MSL.

Area E. Expand Area E to include the area between the 10-NM and 15-NM DME arcs of the Cardinal VOR/DME and lower the floor from 3,500 feet MSL to 3,000 feet MSL.

Area F. Reduce the lateral limits of Area F to two areas between the 15-NM and 20-NM DME arcs of the Cardinal VOR/DME and lower the floor from 4,500 feet MSL to 3,500 feet MSL.

Area G. Expand those portions of airspace that were eliminated from the current Area F and re-designate that airspace as Area G. The altitude would remain from 4,500 feet MSL to and including 8,000 feet MSL.

Area H. Re-designate a portion of the current Area G as a new Area H. The altitude would remain from 5,000 feet MSL to and including 8,000 feet MSL.

Area I. Designate a new Area I between the 20-NM and 30-NM arcs of the Cardinal VOR/DME to the west of KSTL.

These modifications would improve the management of aircraft operations in the STL terminal area and enhance safety by expanding the dimensions of the STL Class B airspace area to protect large, turbine-powered aircraft arriving and departing KSTL. Additionally, this proposed action supports various efforts to enhance the efficiency and capacity of the National Airspace System.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act 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, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in Department of Transportation's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and 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.

This NPRM would modify the St. Louis, MO, Class B airspace area. The proposed rule would expand the eastern boundary of the airspace area, and alter several of the existing areas within St. Louis, MO, Class B airspace area.

The NPRM would generate benefits for system users and supports the national airspace redesign goal of the FAA by maximizing the efficiency of terminal and en route airspace areas to reduce aircraft delays, improve system capacity, and enhance safety. The cost of circumnavigation is considered to be small. Thus, the FAA has determined this proposed rule would be cost-beneficial.

Total Costs and Benefits of This Rulemaking

The NPRM would generate benefits for air carriers and the FAA in the form of enhanced operational efficiency and simplified navigation of the STL terminal area. However, general aviation (GA) operators may experience a marginal increase in circumnavigation costs due to the proposed expansion of the airspace area.

The proposed rule would not impose any additional administrative costs on the FAA for either personnel or equipment.

Who Is Potentially Affected by This Rulemaking?

This proposed rulemaking affects anyone who would operate in STL Class B airspace area, and specifically those aircraft with large, turbine-powered engines.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may impose some circumnavigation costs on individuals operating in the STL terminal area, but the proposed rule would not impose any costs on small business entities. Individual operators of GA aircraft are not considered as small business entities. As such, they are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the STL terminal area. Therefore, these small entities should not incur any additional costs as a result of the proposed rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination and requests that all comments be accompanied by clear documentation.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandate 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. 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 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this action.

Conclusion

In view of the small compliance cost to circumnavigate the controlled airspace by operators of non-compliant aircraft of the proposed rule and enhancements to aviation safety and operational efficiency, the FAA has determined the proposed rule would be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 3000—Class B Airspace.

* * * * *

ACE MO B St. Louis, MO [Revised]

Lambert-St. Louis International Airport (Primary Airport)
(Lat. 38°44′52″ N., long. 90°21′36″ W.)
Creve Coeur Airport
(Lat. 38°43′36″ N., long. 90°30′30″ W.)
St. Charles Municipal Airport
(Lat. 38°50′55″ N., long. 90°30′00″ W.)
Cardinal VOR/DME (CSX)
(Lat. 38°45′10″ N., long. 90°21′39″ W.)
Foristell VORTAC
(Lat. 38°41′40″ N., long. 90°58′17″ W.)
ILS Runway 30L Localizer
(Lat. 38°45′17″ N., long. 90°22′52″ W.)

Boundaries

Area A. That airspace extending from the surface to and including 8,000 feet MSL within a 6-mile DME radius of the Cardinal VOR/DME excluding that airspace within the 1.5NM radius of the Creve Coeur Airport.

Area B. That airspace extending upward from 1,700 feet MSL to and including 8,000 feet MSL within a 10-mile DME radius of the Cardinal VOR/DME beginning at the intersection of the 6-mile DME arc and Page Avenue, then westward along Page Avenue to Missouri Route 94, then westward along Missouri Route 94 to the intersection of Missouri Route 94 and the 10-mile DME arc, then clockwise along the 10-mile DME arc to the intersection of the 10-mile DME arc and the power lines located 2NM north of the St. Charles Municipal Airport, then southeast along the power lines to the intersection of the power lines and the 6-mile DME arc, then counterclockwise along the 6-mile DME arc to the intersection of the 6-mile DME arc and the 1.5NM radius arc of the Creve Coeur Airport, then clockwise along the 1.5NM arc of the Creve Coeur Airport to the intersection of the 1.5NM arc of the Creve Coeur Airport and the 6-mile DME arc, then counterclockwise along the 6-mile DME arc to the point of beginning.

Area C. That airspace extending upward from 2,000 feet MSL to and including 8,000 feet MSL within a 10-mile DME radius of the Cardinal VOR/DME, excluding Areas A, B, and D.

Area D. That airspace extending upward from 2,500 feet MSL to and including 8,000 feet MSL within a 10-mile DME radius of the Cardinal VOR/DME, bounded on the south by the 10-mile DME arc and on the north by Interstate 64.

Area E. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile DME radius of the Cardinal VOR/DME, excluding Areas A, B, C, and D.

Area F. That airspace extending upward from 3,500 feet MSL to and including 8,000 feet MSL within a 20-mile DME radius of the Cardinal VOR/DME, northwest of the Cardinal VOR/DME, beginning at the intersection of Interstate 64 and the 20-mile DME radius, clockwise along the 20-mile DME arc to the intersection of the 20-mile DME arc and the island in the Illinois River (lat. 39°02′23″ N., long. 90°34′40″ W.), then along a line direct to the 15-mile DME arc centered on Grafton, Illinois (lat. 38°59′12″ N., long. 90°28′20″ W.), then counterclockwise along the 15-mile DME arc to the intersection of the 15-mile DME arc and Interstate 64, then west along Interstate 64 to the point of beginning; and that airspace, southeast of the Cardinal VOR/DME, beginning at the intersection of the 20-mile DME arc of the Cardinal VOR/DME and Interstate 270, then clockwise along the 20-mile DME arc to the intersection of the 20-mile DME arc and Illinois Route 3, then northwest along Illinois Route 3 to the intersection of Illinois Route 3 and Interstate 255, then northwest along Interstate 255 to the 15-mile DME arc, then counterclockwise along the 15-mile DME arc to the intersection of the 15-mile DME arc and Interstate 270, then east along Interstate 270 to the point of beginning.

Area G. That airspace extending upward from 4,500 feet MSL to and including 8,000 feet MSL within a 30-mile DME radius of the Cardinal VOR/DME, southeast of the Cardinal VOR/DME, beginning at the intersection of the 30-mile DME arc and Victor 4 Low Altitude Airway, then northwest along Victor 4 to the intersection of Victor 4 and the 20-mile DME arc, then clockwise along the 20-mile DME arc to the intersection of the 20-mile DME arc and Illinois Route 3 (Columbia, Illinois), then southeast along a line parallel to the runway 30L localizer course to intersect the 30-mile DME arc, then counterclockwise along the 30-mile DME arc to the point of beginning; and that airspace, northwest of the Cardinal VOR/DME, beginning at the Cardinal VOR/DME 320° radial at 30 DME, then counterclockwise along the 30-mile DME arc to the Cardinal VOR/DME 286° radial at 30 DME, then along a line southeast direct to the Cardinal VOR/DME 277° radial at 20 DME, then clockwise along the 20-mile DME arc to the intersection of the 20-mile DME arc and the island in the middle of the Illinois River (lat. 39°02′23″ N., long. 90°34′40″ W.), then along a line northwest direct to the point of beginning.

Area H. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL within a 20-mile DME radius of the Cardinal VOR/DME, excluding Areas A, B, C, D, E, and F.

Area I. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL within a 30-mile DME radius of the Cardinal VOR/DME, beginning at the Cardinal VOR/DME 286° radial at 30 DME, then counterclockwise along the 30-mile DME arc to the intersection of the 30-mile DME arc and the power line 2.5NM northwest of the Foristell VORTAC, then east along the power line to the intersection of the power line and the

20-mile DME arc, then clockwise along the 20-mile DME arc to the Cardinal VOR/DME 277° radial at 20 DME, then along a line northwest direct to the point of beginning.

* * * * *

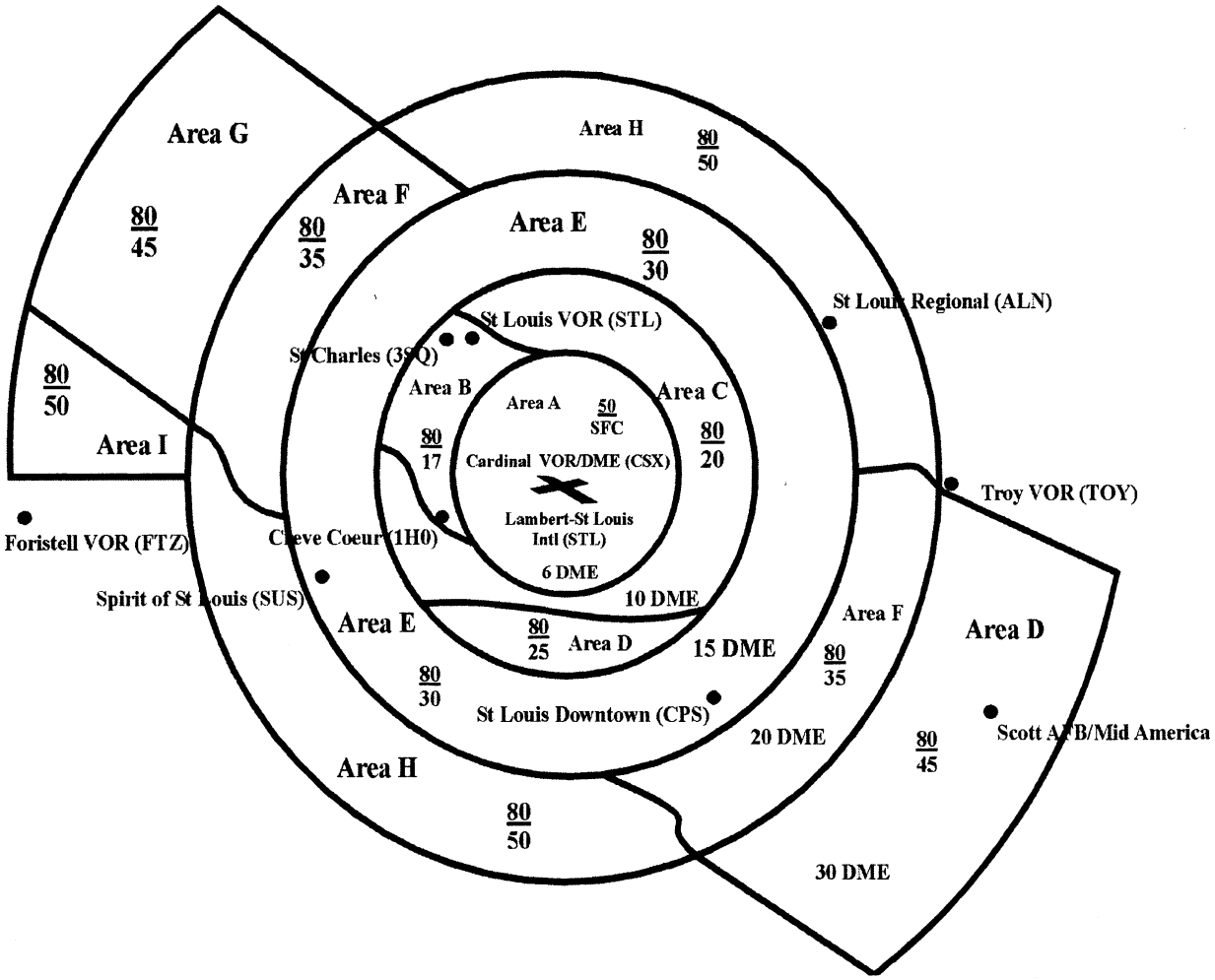
Issued in Washington, DC, on November 16, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

BILLING CODE 4910–13–P

ST. LOUIS, MO
CLASS B AIRSPACE AREA



(NOT TO BE USED FOR NAVIGATION)

ASD 03-AWA-2

[FR Doc. 05–23096 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–096]

RIN 1625–AA09

Drawbridge Operation Regulations; Cheesequake Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Route 35 Bridge, mile 0.0, across Cheesequake Creek at South Amboy, New Jersey. This proposed rule would allow the bridge owner to require a two hour notice from 11 p.m. to 7 a.m., year round and all day from December 1 through March 31. This rule is expected to meet the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before January 23, 2006.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, NY 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–096), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The Route 35 Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing drawbridge operation regulations are listed at 33 CFR 117.709(a).

The existing regulations require the bridge to operate as follows:

From May 1 through October 31, from 7 a.m. to 8 p.m., the draw need only open on the hour. From 8 p.m. to 11 p.m. the draw shall open on signal. From 11 p.m. to 7 a.m. the draw shall open after at least a four hour notice is given. From November 1 through April 30 the draw shall open on signal after at least a four hour notice is given.

On April 20, 2005 the Coast Guard published a final rule changing the drawbridge operation regulations for the Route 35 Bridge, to the current operation schedule outlined above.

Subsequent to the publication of that final rule (70 FR 20464), the bridge owner and the Coast Guard were contacted by several mariners and a local public official advising that the four hour advance notice required by the new rule was problematic and that consideration be given to revising the rule.

After conducting an investigation including a meeting of all interested parties, the Coast Guard is proposing to change the drawbridge operation regulations for the Route 35 Bridge to require a two hour notice during the times the bridge is not normally crewed instead of the four hour notice presently authorized, and to change the all day notice requirement from the existing November 1 through April 30, to December 1 through March 31.

Discussion of Proposal

This proposed rule would amend 33 CFR 117.709 by revising paragraph (a) to allow the bridge owner to require a two hour notice for bridge openings from 11 p.m. to 7 a.m., year round and all day from December 1 through March 31.

Regulatory Evaluation

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

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

This conclusion is based on the fact that the bridge will open during times when the bridge is not normally crewed after a two hour instead of four hour notice which is required by the existing regulations.

Small Entities

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

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

This conclusion is based on the fact that the bridge will open during times the bridge is not normally crewed after a two hour instead of four hour notice which is required by the existing regulations.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact us in writing at, Commander (obr), First Coast Guard District, Bridge Branch, One South Street, New York, NY, 10004. The telephone number is (212) 668–7165. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

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

§ 117.709 Cheesequake Creek.

(a) The draw of the Route 35 Bridge, at mile 0.0, at South Amboy, New Jersey, shall operate as follows:

(1) From April 1 through November 30 from 7 a.m. to 8 p.m., the draw need only open on the hour. From 8 p.m. to 11 p.m. the draw shall open on signal. From 11 p.m. to 7 a.m. the draw shall open after a two hour notice is given by calling the number posted at the bridge.

(2) From December 1 through March 31, the draw shall open on signal after a two hour notice is given by calling the number posted at the bridge.

* * * * *

Dated: November 4, 2005.

David P. Pekoske,

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

[FR Doc. 05–23028 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–7999–2, E–Docket ID No. OAR–2005–0163]

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR), and New Source Performance Standards (NSPS): Emissions Test for Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing and extension of comment period.

SUMMARY: The EPA is announcing a public hearing to be held on December 9, 2005 and an extension of the public comment period on our proposed changes to the New Source Review (NSR) permitting program at 70 FR 61081. (October 20, 2005). The proposed changes would revise the emissions test for existing electric generating units (EGUs) that are subject to the regulations governing the Prevention of Significant Deterioration and nonattainment major NSR programs mandated by parts C and D of title I of the Clean Air Act (CAA). We also solicited comment on a proposed revised emissions test under the New Source Performance Standards (NSPS) regulations. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed changes. The EPA is also extending the public comment period from December 19, 2005 to February 17, 2006. The EPA is holding the public hearing and extending the public comment period by 60 days because of the number of requests we received in a timely manner.

DATES: *Comments:* Comments must be received on or before February 17, 2006.

Public Hearing: The public hearing will convene at 9 a.m. and continue until at least 7 p.m., or until the last registered speaker has spoken, but no later than 9 p.m., on December 9, 2005. People wishing to present oral testimony are strongly encouraged to register before the hearing, unregistered speakers will be accommodated to the extent time is available. The public hearing will close at 12 noon for lunch and reconvene at 1 p.m. The public hearing will close at 5:30 p.m. for dinner and reconvene at 6:30 p.m. For updates and additional information on the public hearing, please check EPA's web site for this rulemaking at *http://www.epa.gov/nsr.*

ADDRESSES: *Public Hearing:* The public hearing will be held at the U.S. Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, North Carolina 27709, Building C, in Auditorium C111. Because this hearing is being held at U.S. government facilities, everyone planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building and demonstrations will not be allowed on Federal property for security reasons. Directions to the EPA Campus are available on the internet at *http://www.epa.gov/rtp/facilities/maindirections.htm,* along with a map showing the area designated for visitor parking. From there, walk toward the main facility and enter the center building (by the U.S. and EPA flags).

Comments: Submit your comments, identified by Docket ID No. OAR–2005–0163 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Attention Docket ID No. OAR–2005–0163, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mail Code: 6102T, Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for OMB, 725 17th Street, Northwest, Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room B102, Washington, DC 20004, Attention Docket ID No. OAR–2005–0163. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2005–0163. 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 websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid 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).

FOR FURTHER INFORMATION CONTACT: Ms. Janet McDonald at (919) 541–1450, telefax (919) 541–5509, E-mail: *mcdonald.janet@epa.gov* or by mail at U.S. Environmental Protection Agency, OAQPS, Information Transfer and Program Integration Division, (C339–03), Research Triangle Park, North Carolina 27711. As of the date of this announcement, the Agency intends to proceed with the hearings as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public planning to attend any of these hearings are advised to check our Web site at *http://www.epa.gov/nsr/.* Members of the public may also contact *Ms. Chandra Kennedy*, U.S, Environmental Protection Agency, OAQPS, Information Transfer and Program Integration Division, (C339–

03), Research Triangle Park, North Carolina 27711; telephone (919) 541–5319 or E-mail *kennedy.chandra@epa.gov*, to confirm the December 9, 2005 meeting location and date. If you would like to speak at this hearing, you should also contact *Ms. Chandra Kennedy* no later than December 2, 2005 and provide an electronic copy of your presentation for distribution to hearing attendees and for inclusion in E-Docket ID No. OAR–2005–0163. Oral testimony will be limited to 5 minutes per commenter. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Verbatim transcripts and written statements will be included in the rulemaking docket. The agenda will be provided to the speakers no later than December 5, 2005, along with written hearing ground rules and the Federal building safety requirements. For updates and additional information on the public hearing, please check EPA's website for this rulemaking at *http://www.epa.gov/nsr/*.

SUPPLEMENTARY INFORMATION: *Public Hearing:* The EPA's planned seating arrangement for the hearing is theater style, with seats available on a first come, first served basis, for about 300 people. An agenda, the hearing ground rules, and instructions on how to comment will be provided at the hearing.

Comments: This notice extends the public comment period established in the **Federal Register** published on October 20, 2005 (70 FR 61081). In that notice, EPA proposed changes to the NSR and NSPS regulations. The EPA is hereby extending the comment period, which was set to end on December 19, 2005, to February 17, 2006.

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 U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room B102, Washington, DC. Attention Docket ID No. OAR–2005–0163. 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.

Dated: November 15, 2005.

Alan C. Rush,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–23087 Filed 11–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2005–0153; FRL–7997–1]

RIN 2060–AJ71

Control of Air Pollution From New Motor Vehicles; Revisions to Motor Vehicle Diesel Fuel Sulfur Transition Provisions; and Technical Amendments to the Highway Diesel, Nonroad Diesel, and Tier 2 Gasoline Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The highway diesel fuel sulfur program, finalized in 2001, is resulting in the nationwide transition in 2006 of most diesel fuel from low-sulfur diesel (LSD) to ultra-low sulfur diesel (ULSD). Some in the diesel fuel production and distribution industries have indicated that they may be unable to complete the transition to ULSD by the current deadlines at the very furthest reaches the distribution system. In response, today's proposed action would make limited changes to the transition provisions for entities in the highway diesel distribution system. These proposed changes finely balance the concerns of the fuel industry with the critical need for ULSD to be available for 2007 diesel vehicles and engines. The impacts of the recent hurricanes along the Gulf Coast of the U.S. are not a contributing factor in today's proposed action, and there would be no change in the June 1, 2006 start date for refiners to be producing ULSD (15 ppm sulfur).

We propose to extend the ULSD implementation dates for terminals and retail outlets by 45 days. Thus, terminals would have until September 1, 2006 (vs. July 15) and retailers would have until October 15, 2006 (vs. September 1) to complete their transitions to ULSD. We also propose that downstream of the refinery fuel slightly higher than 15 ppm sulfur could temporarily be sold as ULSD. In addition, we propose to extend the beginning of the restriction on how much ULSD can be downgraded to higher sulfur fuel by 15 days, to October 15, 2006 to be consistent with the end of the proposed new transition dates. The rule also includes proposed corrections to the recordkeeping and reporting requirements under the highway diesel and also proposes several minor amendments to the highway diesel sulfur, nonroad diesel sulfur, and gasoline sulfur programs to correct errors or omissions in the regulations.

DATES: Written comments must be received by December 22, 2005. More information about commenting on this action may be found under Public Participation in **SUPPLEMENTARY INFORMATION**, below.

ADDRESSES: For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. This proposed rule and the accompanying direct final rule are available electronically on the day of publication from the Office of the Federal Register internet Web site listed below. Prepublication electronic copies of these notices are also available from the EPA Office of Transportation and Air Quality Web site listed below. This service is free of charge, except for any cost that you already incur for internet connectivity.

Federal Register Web Site: http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (Either select desired date or use Search feature.)

Office of Transportation and Air Quality Web Site: http://www.epa.gov/otaq/ (Look in ''What's New'' or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

EPA has established a docket for this action under Docket ID No. OAR–2005–0153. 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., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air 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: Tad Wysor, Assessment and Standards Division, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; telephone: (734) 214–4332, fax: (734) 214–4816, e-mail: *wysor.tad@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, including the rationale, administrative requirements, statutory authority, and regulatory text for these technical amendments, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Public Participation: EPA solicits comments on all aspects of this proposal from all parties. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. You may submit comments, identified by Docket No. OAR–2005–0153, by any of the following methods:

- *Federal eRulemaking portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: A-and-R–Docket@epa.gov*. Include Docket No. OAR–2005–0153 in the subject line of the message.
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20004.

Instructions: Direct your comments to Docket ID No. OAR–2005–0153. 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).

I. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- 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, EPA has determined that this proposed rule is not a ''significant regulatory action''. Today's action proposes to move the implementation date for certain recordkeeping and reporting requirements under the highway diesel program from June 1, 2007 to June 1, 2006 for an additional one time cost of $11,570,000 (see sections II and IV.B. in the preamble to the direct final rule that accompanies this proposal in the ''Rules and Regulations'' section of this **Federal Register**). Today's proposal would extend the terminal and retail ULSD implementation dates, and the effective date of the anti-downgrading requirement, and increase the downstream sulfur adjustment factor during the transition period to ULSD (see section I of the preamble to the accompanying direct final rule). There would be no new costs associated with these provisions. There would also be no new costs associated with the other proposed miscellaneous technical amendments to the highway diesel, nonroad diesel, and Tier 2 gasoline programs (see section III in the accompanying direct final rule). Therefore, this proposed rule is not subject to the requirements of Executive Order 12866.

Final Regulatory Support Documents were prepared in connection with the original regulations for the Highway Diesel Rule, Nonroad Diesel Rule, and Tier 2 gasoline rule as promulgated on January 18, 2001, June 29, 2004, and February 10, 2000 respectively, and we have no reason to believe that our analyses in the original rulemakings were inadequate. The relevant analyses are available in the docket for the January 18, 2001 rulemaking (A–99–061), the June 29, 2004 rulemaking (OAR–2003–0012 and A–2001–28) [1], and the February 10, 2000 rulemaking (A–97–10), and at the following Internet addresses: *http://www.epa.gov/cleandiesel* and *http://www.epa.gov/tier2*. The original actions were submitted to the Office of Management and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

The annual information collection burden associated with this action was accounted for in previously approved ICRs. The provisions of this proposed rule would provide limited additional

[1] During the course of the Nonroad Rule, the Agency converted from the legacy docket system to the current electronic docket system (EDOCKET).

flexibility to entities in the highway diesel distribution system during the transition to ultra-low sulfur diesel fuel in 2006. The other miscellaneous proposed amendments in today's notice contain technical corrections and clarifications which do not include any new information collection requirements. The proposed amendments to the designate and track provisions under the highway and nonroad diesel programs (contained in section II of the accompanying direct final rule) would require compliance with these provisions beginning June 1, 2006. Compliance with these provisions is currently required beginning June 1, 2007. The annual compliance burden associated with these provisions would not be affected by advancing the implementation date by one year. This annual burden was accounted for in the current information collection request for the highway and nonroad diesel fuel programs. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing highway rule (66 FR 5002, January 18, 2001), the existing Nonroad Rule (69 FR 38958, June 29, 2004), and the existing Tier 2 gasoline rule (65 FR 6698, February 10, 2000), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The ICRs contained in the highway diesel and nonroad diesel rules were assigned OMB control number 2060–0308, and EPA ICR number 1718.06. This ICR is currently being revised to reflect the change in the implementation date for the pertinent designate and track requirements from June 1, 2006 to June 1, 2007 (consistent with the accompanying direct final rule). The annual compliance burden for the full designate and track requirement beginning in June 1, 2007 was estimated at $11,570,000 and 178,000 hours. The designate and track requirements that today's proposed rule would make effective June 1, 2006, are for a limited subset of designated fuels (highway diesel only), and the reporting requirements for the initial year (June 1, 2006—May 31, 2007) were abbreviated by today's rule. Therefore, the annual burden for the initial year could be expected to be somewhat less than that estimated for following years.

The ICRs contained in the Tier 2 gasoline rule were assigned OMB control number 2060–0437, and EPA ICR number 1907.02. A copy of the OMB approved Information Collection Requests (ICRs) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility

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

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

After considering the economic impacts of today's proposed rule on small entities, we certify that this action would not have a significant economic impact on a substantial number of small entities. The proposed ULSD transition provisions in today's rule would provide limited, temporary flexibility to entities in the highway diesel distribution system downstream of the refineries and import facilities. Advancing the implementation date for certain recordkeeping and reporting requirements under the highway diesel program (as described in section II of the preamble to the direct final rule that accompanies this proposal) would result in an additional one year of costs associated with compliance with these provisions for all affected fuel distributors, including those that are small entities. During the rulemaking that resulted in the promulgation of these provisions, we determined that they would not have a significant impact on a substantial number of small entities. The other miscellaneous proposed technical amendments to the highway diesel, nonroad diesel, and Tier 2 gasoline programs would not impose a significant new burden to any regulated party.

Prior to proposing the Highway Rule on June 2, 2000, the Nonroad Rule on May 23, 2003, and the Tier 2 Gasoline Rule on May 13, 1999 EPA conducted outreach to small entities and convened Small Business Advocacy Review (SBAR) panels to obtain the advice and recommendations of representatives of the small entities that potentially would be subject to the requirements of the rules (66 FR at 5130, 69 FR at 39155–6, and 69 FR 39155–39162 respectively). For a full description of the Panel process, the SBAR report, and the initial Regulatory Flexibility Analyses (in Chapters 8, 11, and 8 respectively) of each rule's Regulatory Impact Analysis (RIA), refer to the docket for the Highway Diesel Rule (Public Docket A–99–061), the Nonroad Diesel Rule (Public Docket OAR–2003–0012 and A–2001–28), and the Tier 2 Gasoline Rule (Public Docket A–97–10), and the following Internet addresses: *http://www.epa.gov/cleandiesel/ and http://www.epa.gov/tier2/.*

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 to 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 of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for the following: 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.

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. This proposed rule would impose no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. The requirements of UMRA therefore do not apply to this action.

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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, imposes substantial direct compliance costs, and is not required by statute. However, if the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation, these restrictions do not apply. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Although section 6 of Executive Order 13132 did not apply to the Highway Rule (66 FR 5002) or the Nonroad Rule (69 FR 38958), EPA did consult with representatives from STAPPA/ALAPCO, which represents state and local air pollution officials. 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'' (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule would not uniquely affect the communities of Indian Tribal Governments. This rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

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 that it

would have a significant adverse effect on the supply, distribution or use of energy. This proposed rule would provide limited, temporary flexibility to entities in the highway diesel distribution system downstream of the refineries and import facilities. Other proposed amendments contained in today's action pertain to ensuring the enforceability of the highway diesel program. The remaining proposed amendments in today's rule would provide technical correction and clarification to the requirements under the highway diesel, the nonroad diesel, and the Tier 2 gasoline programs.

I. National Technology Transfer and Advancement Act

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 doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Thus, we have determined that the requirements of the NTTAA do not apply.

II. Statutory Provisions and Legal Requirements

The statutory authority for this action comes from sections 211(c) and (i) of the Clean Air Act as amended 42 U.S.C. 7545(c) and (i). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1). Additional support for the procedural and enforcement related aspects of the rule comes from sections 144(a) and 301(a) of the Clean Air Act. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Diesel fuel, Fuel additives, Gasoline, Motor vehicle Pollution, Penalties, Recordkeeping and reporting requirements.

Dated: November 8, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–22806 Filed 11–21–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2930

RIN: 1004–AD68

[WO–250–1220–PA–24 1A]

Permits for Recreation on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the regulations of the Bureau of Land Management (BLM) that tell how to obtain recreation permits for commercial recreational operations, competitive events and activities, organized group activities and events, and individual recreational use of special areas.

The proposed rule is needed to remove from the regulations inconsistencies with the Federal Lands Recreation Enhancement Act (REA), which authorizes the Secretaries of the Interior and Agriculture to establish, modify, charge, and collect recreation fees at Federal recreation lands and waters for the next 10 years.

DATES: You should submit your comments by January 23, 2006. BLM will not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decisionmaking process on the proposed rule.

ADDRESSES:

Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401-LS, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

Personal or messenger delivery: Room 401, 1620 L Street, NW., Washington, DC 20036.

Federal eRulemaking Portal: *http://www.regulations.gov*.

Internet e-mail: *comments_washington@blm.gov*. (Include ''Attn: AD68'').

FOR FURTHER INFORMATION CONTACT: Lee Larson at (202) 452–5168 as to the substance of the proposed rule, or Ted Hudson at (202) 452–5042 as to procedural matters. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

A. How do I comment on the proposed rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.
- You may deliver comments to Room 401, 1620 L Street, NW., Washington, DC 20036.
- You may comment on the rule at the Federal eRulemaking Portal: *http://www.regulations.gov*.
- You may also comment via e-mail to: *comments_washington@blm.gov*.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under ''**ADDRESSES:** Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

The REA was passed in the 2005 Omnibus Appropriations bill signed into law on December 8, 2004. The Act provides authority for 10 years for the Secretaries of the Interior and

Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreation lands and waters.

Section 13 of REA repealed certain admission and use fee authorities, including Section 4(a) through (i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a *et seq.*), and Section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 16 U.S.C. 460*l*–6a). The latter provision authorized the Recreational Fee Demonstration Program, which BLM has used to fund many of our recreation sites. Because these authorities have been repealed, we need to amend BLM's recreation permit regulations to remove references to them.

Under REA, BLM will—

- Reinvest a majority of fees back to the site of collection to enhance visitor services and reduce the backlog of maintenance needs for recreation facilities (including trail maintenance, toilet facilities, boat ramps, hunting blinds, interpretive signs and programs);
- Participate in an interagency fee program that reduces the number of national passes from four to one allowing visitors access to all Federal recreation lands and sites;
- Provide more opportunities for public involvement in BLM's determination of recreation fee sites and fees; and
- Provide for cooperation with gateway communities through fee management agreements for visitor and recreation services, emergency medical services, and law enforcement services.

BLM does not and will not charge a fee for many recreation activities and sites on public lands. The REA includes additional provisions that build on BLM's past experiences in the recreation fee program and improve the fee program by clarifying the circumstances in which fees may be charged. Under the Act, BLM will not charge standard or expanded amenity recreation fees for—

- General access to BLM areas;
- Horseback riding, walking through, driving through, or boating through public lands where no facilities or services are used;
- Access to overlooks or scenic pullouts;
- Undesignated parking areas where no facilities are provided; or
- Picnicking along roads or trails.

In addition, individuals under 16 will not be charged an entrance or standard amenity fee.

Under the REA, BLM will form and use Recreation Resource Advisory Committees for BLM sites and areas, or in lieu of a Recreation Resource Advisory Committee, may use a Resource Advisory Committee under another provision of law, to give communities additional opportunities to provide input on the establishment of a specific recreation fee site or the implementation of a fee, and will provide other opportunities for notice and public participation before establishing a new fee. We will also keep the visiting public informed on how we are using fee revenues to improve visitor facilities and services.

III. Discussion of Proposed Rule

The proposed rule makes changes in the existing regulations on permits for recreation on public lands in order to bring them into conformance with the law, including the REA. This section of the preamble describes the changes made in each section of the regulations.

Section 2931.3 What are the authorities for these regulations?

The proposed rule would amend this section to remove references to the repealed authority, portions of the Land and Water Conservation Fund Act, 16 U.S.C. 460*l*–6a, and add reference to the REA. It explains that the REA authorizes BLM to collect fees for recreational use of certain kinds of areas, and to issue special recreation permits for group activities, such as commercial outings, and recreation events, such as races or traditional assemblies. The rule also clarifies the authority contained in Section 303 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1733. It also restates the functions of 18 U.S.C. 3571 and 3581 *et seq.*, that they establish penalties of fines and imprisonment for violation of regulations. Finally, in this section, the rule removes paragraph (b) discussing 36 CFR part 71, because the regulations there are outdated.

Section 2932.57 Prohibited acts and penalties.

In this section, which covers prohibited acts and penalties related to special recreation permits, the proposed rule would amend paragraph (b)(3) by removing reference to the Land and Water Conservation Fund Act and adding the REA in its place.

Section 12(d) of the REA establishes limits on penalties for failure to pay recreation fees established under the Act. It provides for such failures to be punishable as Class A or Class B misdemeanors, but limits fines for a first offense to $100. (Under 18 U.S.C. 3571 and 3581, a Class A misdemeanor is subject to a penalty of not more than $100,000 for an individual ($200,000 for an organization) or one year in jail. A Class B misdemeanor is subject to a fine of not more than $5,000 for an individual ($10,000 for an organization) or six months in jail.) We have also revised paragraph (b) of section 2932.57 to reflect this provision of the REA.

Section 2933.33 Prohibited acts and penalties.

The proposed rule would amend this section, which states prohibitions and imposes penalties related to recreation use permits, by removing references to the Land and Water Conservation Fund Act, and substituting REA, where appropriate. To conform the prohibited acts in paragraph (a) of the section with the table of penalties in paragraph (d), we have added a provision to paragraph (a) requiring compliance with recreation use permit stipulations and conditions. The proposed rule would also remove unnecessary internal cross-references in this section, and correct inaccurate legal citations.

IV. Procedural Matters

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule implements a new statute that affects all land managing agencies. The other agencies are cooperating with BLM in developing general guidelines for implementing the statute.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It maintains current policies on user fees.

(4) This rule does not raise novel legal or policy issues. It cites new statutory authority that does not have substantially different effects on the program or the public.

During fiscal year 2004, BLM issued just over 109,000 Special Recreation Permits of all kinds, with revenues totaling a little over $8 million deposited into the Land and Water Conservation Fund (LWCF), the Fee Demonstration Project, and other

miscellaneous accounts. These numbers are derived from the Public Land Statistics, and represent an increase of slightly more than fivefold since 1996. On the other hand, according to the American Recreation Coalition, Americans spent more than $108 billion on wildlife-related recreation (fishing, hunting, birdwatching, and so forth) alone. We give these numbers to illustrate that the fees charged under BLM's recreation program are minuscule compared with those realized by the overall national recreation industry. Special Recreation Permits are generally obtained by commercial outfitters and guides, river running companies, sponsors of competitive events, ''snow bird'' seasonal mobile home campers who use BLM's long-term visitor areas, and private individuals and groups using certain special areas. Under current regulations, use fees are established by the BLM Director, who may adjust them from time to time to reflect changes in costs and the market, and published periodically in the **Federal Register**. BLM may charge actual costs, subject to certain limitations. During fiscal year 2004, BLM issued just over 655,000 Recreation Use Permits for use of fee sites, with revenues totaling a little over $5,200,000. We state these figures to give some idea of the scope of the BLM recreation program in economic terms, and to show that the revenues from the program do not approach $100 million annually. The REA makes changes in the authorities for BLM's recreation fees, but Section 3 of the Act does not change the policy for setting those fees: ''The amount of the recreation fee shall be commensurate with the benefits and services provided to the visitor,'' and ''[t]he Secretary shall consider comparable fees charged elsewhere and by other public agencies and by nearby private sector operators.'' Thus, it is clear that the changes in the proposed rule will not have economic effects exceeding $100 million annually.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). BLM recognizes that most commercial recreation enterprises—outfitters, guides, river-running companies, local retail outlets—are small businesses, and that over 5,000 of them annually hold BLM commercial or competitive permits. Nevertheless, this proposed rule does not change permit fees, but rather updates the regulations to reflect changes in authorities for the fees and changes their allocation. Penalties for non-payment of fees would not affect outfitters, event organizers, and other commercial permittees, who must pay the fees before receiving permits.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of $100 million or more. See the discussion under Regulatory Planning and Review, above.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The rule will have no effect on the 3 percent basic use fee that BLM s fee schedule (set by the 1984 policy, not regulations) requires outfitters to pay.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The changes in the regulations required by enactment of the REA will not lead to increases in user fees or any other cost factors that would impel recreationists to travel to comparable foreign recreation destinations.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or Tribal governments or the private sector. The rule has no effect on governmental or Tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, BLM finds that the rule does not have significant takings implications. The proposed rule does not provide for forfeiture or derogation of private property rights. It merely updates the regulations to reflect changes in statutory authorities for the BLM recreation program covered by the regulations. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt state law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments.

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have Tribal implications. The rule has no effect on Tribal lands, and affect member of Tribes only to the extent that they use public lands and facilities for recreation. The rule merely updates the regulations to reflect changes in statutory authorities.

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule does not limit land use by energy companies. It applies only to permits for recreational use of public lands, how BLM collects revenues and applies them to the program.

Paperwork Reduction Act

These regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

BLM has determined that this proposed rule updating the recreation permit regulations to recognize and reflect changes in statutory authorities governing the payment and allocation of permit fees and the penalties for nonpayment is a regulation of an administrative, financial, legal, and procedural nature. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), *Chapter 2, Appendix 1.* In addition, the proposed

rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in *516 DM, Chapter 2, Appendix 2.* Pursuant to Council on Environmental Quality regulations (*40 CFR 1508.4*) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required. Therefore, a detailed statement under the National Environmental Policy Act of 1969 is not required.

Author

The principal author of this proposed rule is Lee Larson of the Recreation Group, Washington Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

List of Subjects in 43 CFR Part 2930

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds.

For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, we propose to amend chapter II, subtitle B of title 43 of the Code of Federal Regulations as follows:

Dated: October 24, 2005.

Chad Calvert,

Acting Assistant Secretary of the Interior, Land and Minerals Management.

PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

1. The authority citation for part 2930 is revised to read as follows:

Authority: 43 U.S.C. 1740; 16 U.S.C. 6802.

Subpart 2931—Permits for Recreation; General

2. Revise section 2931.3 to read as follows:

§ 2931.3 What are the authorities for these regulations?

The statutory authorities underlying the regulations in this part are the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and the Federal Land Recreation Enhancement Act, 16 U.S.C. 6801 *et seq.*

(a) The Federal Land Policy and Management Act (FLPMA) contains the Bureau of Land Management's (BLM's) general land use management authority over the public lands, and establishes outdoor recreation as one of the principal uses of those lands (43 U.S.C. 1701(a)(8)). Section 302(b) of FLPMA directs the Secretary of the Interior to regulate through permits or other instruments the use of the public lands, which includes commercial recreation use. Section 303 of FLPMA authorizes BLM to promulgate and enforce regulations, and establishes the penalties for violations of the regulations.

(b) The Federal Land Recreation Enhancement Act (REA) authorizes BLM to collect fees for recreational use in areas meeting certain criteria (16 U.S.C. 6802(f) and (g)(2)), and to issue special recreation permits for group activities and recreation events (16 U.S.C. 6802(h).

(c) 18 U.S.C. 3571 and 3581 *et seq.* establish sentences of fines and imprisonment for violation of regulations.

Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas [Amended]

3. Amend section 2932.57 by revising paragraph (b) to read as follows:

§ 2932.57 Prohibited acts and penalties.

* * * * *

(b) *Penalties.* (1) If you are convicted of any act prohibited by paragraphs (a)(2)–(a)(7) of this section, you may be subject to a sentence of a fine or imprisonment or both for a Class A misdemeanor in accordance with 18 U.S.C. 3571 and 3581 *et seq.* under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)).

(2) If you are convicted of any act prohibited by paragraph (a)(1) of this section, you may be subject to a sentence of a fine not to exceed $100 for the first offense, or a sentence of a fine and or imprisonment for a Class A or B misdemeanor in accordance with 18 U.S.C. 3571 and 3581 *et seq.* for all subsequent offenses.

(3) You may also be subject to civil action for unauthorized use of the public lands or related waters and their resources, for violations of permit terms, conditions, or stipulations, or for uses beyond those allowed by permit.

Subpart 2933—Recreation Use Permits for Fee Areas

4. Amend section 2933.33 by revising paragraphs (a), (b), and (d) to read as follows:

§ 2933.33 Prohibited acts and penalties.

(a) *Prohibited acts.* You must not—

(1) Fail to obtain a use permit or pay any fees required by this subpart;

(2) Violate the stipulations or conditions of a permit issued under this subpart;

(3) Fail to pay any fees within the time specified;

(4) Fail to display any required proof of payment of fees;

(5) Willfully and knowingly possess, use, publish as true, or sell to another, any forged, counterfeited, or altered document or instrument used as proof of or exemption from fee payment;

(6) Willfully and knowingly use any document or instrument used as proof of or exemption from fee payment, that BLM issued to or intended another to use; or

(7) Falsely represent yourself to be a person to whom BLM has issued a document or instrument used as proof of or exemption from fee payment.

(b) *Evidence of nonpayment.* BLM will consider failure to display proof of payment on your unattended vehicle parked within a fee area, where payment is required to be prima facie evidence of nonpayment.

* * * * *

(d) *Types of penalties.* You may be subject to the following fines or penalties for violating the provisions of this subpart:

If you are convicted of * * *	then you may be subject to * * *	under * * *
(1) Any act prohibited by paragraph (a)(4), (5), or (6) of this section.	A sentence of a fine and/or imprisonment for a Class A misdemeanor in accordance with 18 U.S.C. 3571 and 3581 *et seq.*	The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)).
(2) Violating any regulation in this subpart or any condition of a Recreation Use Permit.	A sentence of a fine and/or imprisonment for a Class A misdemeanor in accordance with 18 U.S.C. 3571 and 3581 *et seq.*	The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)).

If you are convicted of * * *	then you may be subject to * * *	under * * *
(3) Any act prohibited by paragraph (a)(1), (2), or (3) of this section.	A fine not to exceed $100 for the first offense, or a sentence of a fine and/or imprisonment for a Class A or B misdemeanor in accordance with 18 U.S.C. 3571 and 3581 *et seq.* for all subsequent offenses.	The Federal Lands Recreation Enhancement Act (16 U.S.C. 6811).

[FR Doc. 05–23113 Filed 11–21–05; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 162

[CMS–0050–N]

RIN 0938–AK62

HIPAA Administrative Simplification: Standards for Electronic Health Care Claims Attachments; Extension of Comment Period

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for a proposed rule published in the **Federal Register** on September 23, 2005 (70 FR 55990) that would recommend the adoption of a set of standards to facilitate the electronic exchange of clinical and administrative data to further improve the claims adjudication process when additional documentation is required. Due to the very technical nature of this rule, the industry is asking for additional time to conduct a more comprehensive and thorough review in order to provide comments to the Standards Development Organizations as well as to CMS. The comment period is extended for 60 days.

DATES: The comment period is extended to 5 p.m. on January 23, 2006.

ADDRESSES: In commenting, please refer to file code CMS–0050–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in the September 23, 2005 proposed rule to *http://www.cms.hhs.gov/regulations/ecomments*. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0050–P, P.O. Box 8014, Baltimore, MD 21244–8014.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0050–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lorraine Doo, 410–786–6597.

Submitting Comments: We welcome comments from the public on all issues set forth in the September 23, 2005 proposed rule to assist us in fully considering issues, developing policies and adopting standards. You can assist us by referencing the file code CMS–0050–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

SUPPLEMENTARY INFORMATION: On September 23, 2005, we published a proposed rule in the **Federal Register** (70 FR 55990) that would recommend the adoption of a set of standards to facilitate the electronic exchange of clinical and administrative data to further improve the claims adjudication process when additional documentation is required. This rule proposes two X12N transaction standards: One to request the information, and one to respond to that request with the answer or additional information. This rule also proposes the use of Health Level 7 (HL7) specifications for the content and format of communicating the actual clinical information. Finally, this rule proposes the adoption of the Logical Observation Identifiers, Names and Codes or LOINC® for specific identification of the additional information being requested, and the coded answers that respond to the requests. Due to the highly technical nature of the materials, and the size (length) of the technical documents being reviewed, we want to provide additional time for the industry to review and comment upon all of the technical documents (implementation guides, specifications, code sets, modifiers), and the policies proposed in the September 23, 2005 proposed rule.

Due to the complexity of this proposed rule, the length of time

between the development of the proposed standards and the publication of this proposed rule, the potential need to upgrade the data content of the specifications or the use of Release 2 of the Clinical Document Architecture (CDA), numerous members of the industry and professional associations have requested more time to analyze the potential impact and consequences of the proposed rule. Thus, we have decided to extend the comment period for an additional 60 days. This document announces the extension of the public comment period to January 23, 2006.

Authority: Secs. 1173 and 1175 of the Social Security Act (42 U.S.C. 1302d–2 and 1320d–4).

Dated: November 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: November 17, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–23077 Filed 11–21–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 051114298–5298–01; I.D. 110105C]

RIN 0648–AT12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Commercial Grouper Fishery; Trip Limit

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a 6,000–lb (2,722–kg) commercial trip limit for shallow-water and deep-water grouper, combined, in the exclusive economic zone of the Gulf of Mexico. The intended effect of this proposed rule is to minimize the effects of derby fishing and prolong the fishing season.

DATES: Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on December 7, 2005.

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

- E-mail: *0648–AT12.Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648–AT12.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Andy Strelcheck, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308; Attention: Andy Strelcheck.

Copies of the regulatory amendment, which includes a Regulatory Impact Review (RIR), an Initial Regulatory Flexibility Analysis (IRFA), and an Environmental Assessment (EA), may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813–348–1630; fax: 813–348–1711; e-mail: *gulfcouncil@gulfcouncil.org*. Copies of the regulatory amendment may also be downloaded from the Council's website at *www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Andy Strelcheck, telephone: 727–824–5374; fax: 727–824–5308; e-mail: *andy.stelcheck@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On July 15, 2004 (69 FR 33315, June 15, 2004), NMFS implemented Secretarial Amendment 1 to the FMP to establish a red grouper rebuilding plan, including a 5.31 million-lb (2.42 million-kg), gutted weight, commercial quota and a 1.25 million-lb (0.57 million-kg), gutted weight, recreational target catch level for red grouper. Secretarial Amendment 1 also reduced the commercial quotas for deep-water grouper (i.e., speckled hind and yellowedge, misty, warsaw, and snowy grouper) and shallow-water grouper (i.e., all grouper other than deep-water grouper, goliath grouper, and Nassau grouper and including scamp before the quota for shallow-water grouper is reached). In 2004, the commercial deep-water grouper and shallow-water grouper quotas were reached prior to the end of the fishing year, and the fisheries were closed on July 15, 2004 (69 FR 41433, July 9, 2004), and November 15, 2004 (69 FR 65092, November 10, 2004), respectively. In November 2004, the Council, at the request of representatives of the commercial grouper fishing industry, asked NMFS to develop an emergency or interim rule establishing trip limits for the commercial grouper fishery in 2005. Trip limits, which began at 10,000 lb (4,536 kg) and stepped down to 7,500 lb (3,402 kg) and then to 5,500 lb (2,495 kg) at defined trigger points, were implemented by NMFS through an emergency rule that was effective from March 3 through August 16, 2005 (70 FR 8037, February 17, 2005). NMFS extended the emergency rule and trip limits for an additional 180 days effective August 17, 2005, through February 12, 2006 (70 FR 48323, August 17, 2005). These trip limits were implemented to prolong the shallow-water grouper and deep-water grouper fishing seasons in 2005 and to reduce the adverse effects associated with derby fishing. However, the emergency trip limits were not restrictive enough to achieve the intended objectives. In fact, the deep-water and shallow-water grouper fisheries closed earlier in 2005 (June 23, 2005, and October 10, 2005, respectively) than they had in 2004.

The Council prepared a regulatory amendment to evaluate alternatives and establish more permanent trip limits for the commercial grouper fishery. After considering the effectiveness of existing trip limits, management alternatives, and public testimony, the Council adopted a 6,000–lb (2,722–kg) commercial trip limit for shallow-water grouper and deep-water grouper, combined. This proposed rule would implement the 6,000–lb (2,722–kg) trip limit. To maximize the effectiveness of this more restrictive trip limit, the Council and NMFS have agreed the existing trip limits implemented via emergency rule (70 FR 48323, August 17, 2005) would terminate upon implementation of the 6,000–lb (2,722–kg) trip limit proposed in this rule.

Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the

economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

This proposed rule would establish a 6,000–lb (2,722–kg) trip limit for the commercial grouper fishery in the Gulf of Mexico. The purpose for this regulatory amendment is to reduce the adverse socioeconomic effects of derby fishing in the commercial sector and prolong the fishing season. The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

An estimated 1,129 vessels were permitted to engage in commercial fishing for Gulf reef fish (which include grouper) in early 2004, down from 1,718 vessels in 1993. Although a permit moratorium has limited access in this fishery since 1992, transfer of permits is not restricted. Those seeking to enter the fishery can purchase a permit from those seeking to exit the fishery, provided they meet income and other requirements. However, total participation in terms of both the number of permits and the number of vessels landing Gulf reef fish has consistently declined since 1993.

An estimated 1,157 vessels had permits to fish commercially for Gulf reef fish from 2002–2004, and 1,021 vessels had historical, logbook-reported landings of Gulf reef fish. This total includes 928 vessels with landings of Gulf grouper, for which the median estimated gross revenue for all reported landings of fish was approximately $20,000 per vessel per year, and for which the maximum revenue ranged from $478,000-$543,000. For the longline fleet (162 vessels per year, on average), the median annual gross revenue ranged from $96,000-$102,000 (84–90 percent from grouper). The handline fleet (765 vessels per year, on average) had median annual gross revenue of under $17,000 (44–48 percent from grouper). Some vessels use both gears, so the numbers of vessels cannot be added across gear types.

For the 928 vessels with reported landings of Gulf grouper, historical fishery performance resulted in estimated annual average gross revenue of $46 million for all logbook-reported fish in 2002–2004. This includes gross revenue of $39 million for all fish on trips with grouper landings ($25 million from red grouper). The net revenue for these trips was approximately $29 million (annual averages per vessel for 928 vessels are $41,000 for gross revenue and $31,000 for net revenue). Net revenue for the commercial fishing sector, computed as trip revenue minus trip costs, includes returns to all labor and capital.

Simulation of fishery performance under status quo conditions produced estimates that are slightly lower than historical fishery performance: gross revenue of approximately $37 million for all fish on trips with grouper landings and $27 million for net revenue (annual averages per vessel for 922 vessels are $40,000 for gross revenue and $29,000 for net revenue). Projected net revenue is approximately $10.7 million for the longline fleet (average, $66,000 per vessel per year for 161 vessels), and $14.5 million for the vertical line fleet (average, $19,000 per vessel per year for 748 vessels).

Between 1997–2000, there were on average 123 reef fish dealers actively buying and selling in the grouper market. Of these, 101 dealers (82 percent) sold more than $30,000 per year worth of domestic grouper on a regular basis. These dealers may hold multiple types of permits. Because the extent of business operation for these dealers is unknown, it is not possible to determine what percentage of their business comes from grouper. Average employment information per reef fish dealer is not known, but total employment in 1997 for reef fish processors in the Southeast was estimated at approximately 700 individuals, both part and full time. It is assumed that all processors must be dealers, yet a dealer need not be a processor. Therefore, total dealer employment is expected to be slightly more than 700 individuals. Since none of the reef fish processors meet the SBA employment threshold, it is unlikely that any of the dealers will meet that threshold.

The proposed rule would not change current reporting, recordkeeping, and other compliance requirements under the FMP. These requirements include qualification criteria for the commercial permits, landing reports for vessels with commercial permits, and participation in additional data collection programs if selected by NMFS. All of the information elements required for these requirements are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not require professional skills and, therefore, are deemed not to be onerous.

The Small Business Administration defines a small business in the commercial fishery sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to $3.5 million per year. For support industries, the appropriate thresholds are a firm with fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Given the profiles presented above, it is determined that all commercial fishing entities and dealers that will be affected by the proposed action are small business entities. Because all said entities would be potentially affected, it is determined that the proposed action will affect a substantial number of small entities.

The outcome of ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All the commercial fishing or dealer entities affected by the proposed rule are considered small entities, so the issue of disproportionality does not arise in the present case. The profitability question is do the regulations significantly reduce profit for a substantial number of small entities? The proposed rule is projected to reduce net revenues by $760,000 to $1.09 million for the bottom longline sector. Compared with projected annual net revenue of $10.7 million for this sector under the status quo ($66,000 per vessel per year for 161 vessels), the projected net revenue reduction equates to approximately $4,700-$6,700, or approximately 7–10 percent, per vessel per year, on average.

For the vertical line sector, the proposed rule is projected to increase net revenues by $81,000-$112,000 per year. Compared with projected annual net revenue of $14.5 million for this sector under the status quo ($19,000 per vessel per year for 748 vessels), the projected increase in net revenue equates to approximately $100-$150 per vessel, or less than a 1 percent increase.

The proposed commercial trip limits are expected to reduce the adverse but unquantifiable economic effects of derby fishing that are expected to develop under the status quo. Although the direct impacts of derby fishing cannot be quantified using current data and models, they are expected to be substantial, and reduction of those derby effects is expected to mitigate any

losses in net revenue to the fishery associated with the implementation of trip limits.

Five alternatives, including the status quo, were considered relative to the proposed commercial action. The status quo alternative would eliminate the short-term adverse impacts of the proposed action but would not address the potential development of a derby fishery and would not, therefore, achieve the Council's objectives.

A second alternative to the proposed action would establish a step-down trip limit consisting of trip limits of 10,000, 7,500, and 5,500 lb (4,536, 3,402, and 2,495 kg), gutted weight, based on target dates and accumulated landing totals. This alternative, while resulting in lower short-term reductions in net revenues relative to the proposed action, does not appear to sufficiently constrain commercial landings, as evidenced by 2005 fishery performance. Therefore, this alternative is not sufficient to lessen derby conditions and reduce the length of the quota closure.

The third alternative to the proposed action would start the commercial trip limit at 7,500 lb (3,402 kg) with step-down to 5,000 lb (2,268 kg). This alternative would potentially reduce the short-term reduction in net revenues relative to the proposed action. However, based on preliminary 2005 fishery performance, the starting limit appears insufficient to counter derby pressure.

The fourth alternative would also start with an initial trip limit of 7,500 lb (3,402 kg) with a step-down to 3,500 lb (1,588 kg). The short-term adverse impacts of this alternative, however, exceed those of the proposed action.

The fifth alternative to the proposed commercial action would begin the fishery with a 4,000–lb (1,814–kg) trip limit and allow the trip limit to either be increased, decreased, or remain the same depending upon fishery performance. Although this scenario cannot be fully analyzed due to the absence of a clearly specified step up/down decision rule, the initial limit is so low that it is expected to generate excessive negative impacts, particularly on the bottom longline sector.

Copies of the IRFA are available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 17, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.44, introductory text and paragraph (g) are revised to read as follows:

§ 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

* * * * *

(g) *Gulf deep-water and shallow-water grouper, combined.* For vessels operating under the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for Gulf deep-water and shallow-water grouper combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species subject to the closure is zero. (See § 622.42(a)(1)(ii) and (a)(1)(iii) for the species included in the deep-water and shallow-water grouper categories, respectively.)

[FR Doc. 05–23102 Filed 11–17–05; 2:58 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 224

Tuesday, November 22, 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

Information Collection; Request for Comments; Grazing Permit Administration Forms

AGENCY: USDA, Forest Service.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Forest Service is seeking comments from all interested individuals and organizations on extension of the currently approved collection for seven grazing permit administration forms that assist in administering grazing permits. These Office of Management and Budget approved forms include (1) FS–2200–1 Refund, Credit or Transfer Application; (2) FS–2200–2 Application for Temporary Grazing or Livestock Use Permit; (3) FS–2200–12 Waiver of Term Grazing Permit; (4) FS–2200–13 Escrow Waiver of Term Grazing Permit Privileges; (5) FS–2200–16 Application for Term Grazing Permit; (6) FS–2200–17 Application for Term Private Land Grazing Permit; and (7) FS–2200–25 Ownership Statement by Corporation or Partnership. The proposed information collection authorization would cover existing forms without revision. The current authorization for the forms covered by Information Collection Number 0596–0003 expires on April 30, 2006.

DATES: Comments must be received in writing on or before January 23, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the USDA Forest Service, Attn: Director, Rangeland Management Staff, Mail Stop 1103, 1400 Independence Ave., SW., Washington, DC 20250–1153. To ensure timely delivery, review and consideration, it may be preferable to submit comments by electronic mail to *RgeID@fs.fed.us* (Subject: Grazing Forms); or by facsimile to (202) 205–1096. If comments are sent by electronic means or by facsimile, the public is requested not to send duplicate comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and available for public inspection and copying. The agency cannot confirm receipt of comments.

The public may inspect comments received on these grazing permit administration forms in the Rangeland Management Staff, 3rd Floor, South Wing, Yates Building, 14th and Independence Avenues, Southwest, Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead to (202) 205–1460 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: William Perry, Rangeland Management Staff, USDA Forest Service, (202) 205–1454. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Grazing Permit Administration Forms.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 2006.

Type of Request: Extension with no revisions.

Abstract: Domestic livestock grazing occurs on approximately 90 million acres of National Forest System (NFS) lands. The Forest Service (FS) issues approximately 7,100 grazing permits. This information collection is required to allow proper administration of the livestock grazing program on NFS lands. This grazing is subject to authorization and administrative oversight by the Forest Service. The information is required for the issuance and administration of grazing permits, including fee collections, as authorized by the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, 43 U.S.C. 1700 et seq. and USDA regulations at 36 CFR 222, subparts A and C. This information must be collected on an individual basis, and similar information is not available from any other source.

The information collected on these seven forms is used by the Forest Service in administering the grazing program on NFS lands. Each of these forms is designed to address a unique management circumstance.

FS–2200–1: Refund, Credit, or Transfer Application. This form collects information provided by grazing permittees when requesting a refund, credit, or transfer of any unused portion of previously paid grazing fees. The agency uses the information to determine the appropriate response to the permittee's request, as well as determine the amount of refund, credit, or transfer of the grazing fee. Authority for the request of this information is 36 CFR 222.50(i).

FS–2200–2: Application for Temporary Grazing or Livestock Use Permit; FS–2200–16: Application for Term Grazing Permit; and FS–2200–17: Application for Term Private Land Grazing Permit. These forms are similar in that much of the same information is requested, but each form is specifically designed for a different type of grazing permit as authorized in 36 CFR 222.3(c). Use of a specific form is based on the type of permit being requested. The appropriate forms are completed by the applicant. Information from the completed forms is used to determine qualifications and eligibility of an applicant for a permit, to issue the appropriate permit, and to bill the permittee for grazing fees.

FS–2200–12: Waiver of Term Grazing Permit. This form is completed when a permittee waives his/her grazing privileges back to the United States and also identifies the purchaser of the permitted livestock and/or base property associated with the permit. The Forest service uses this information to cancel an existing grazing permit, to identify the preferred permit applicant based on the purchase of permitted livestock and/or base property, and to issue a subsequent grazing permit. This information is requested under the authority of 36 CFR 222.3(c)(1)(vi)(F).

FS–2200–13: Escrow Waiver of Term Grazing Permit Privileges. This form is completed when a permittee requests the use of permitted livestock or base property associated with a grazing permit as collateral security for a loan. The agency uses this information to

identify a lien holder so that in the event of default on the loan the grazing permit can be transferred to the lien holder. Escrow waiver provisions and procedures are acknowledged in the February 10, 1938, Memorandum of Understanding between the Department of Agriculture and the Farm Credit Administration and the subsequent December 21, 1990, Memorandum of Understanding between the Forest Service and the Farm Credit Banks. Authority for requesting this information is 36 CFR 222.3(c)(1)(vi)(F).

FS–2200–25: Ownership Statement by Corporation or Partnership. This information is provided by the permittee and used by the Forest Service to identify the corporate or partnership interest in a grazing permit. This information allows the Forest Service to issue grazing permits in consideration of the permitttee's corporate and partnership interests. Authority for this information request is 36 CFR 222.3(c).

The forms will be completed by new applicants requesting grazing use, existing permit holders (permittees) requesting a specific program administration action, or prior permit holders requesting a new permit. Respondents include individuals, partnerships, corporations, associations, and other private entities. These forms will be obtained from agency offices in person or by mail and will be completed in situations of both face to face settings with agency personnel, as well as the applicant completing the forms alone. Frequency of use for each form would be annually or less. Without the information supplied, the Forest Service can not determine if applicants are eligible for grazing permits and properly administer the grazing program, including fee collection. The completed forms are maintained in Forest Service District offices under the care of the range program administrator.

Estimate of Annual Burden:

(1) FS–2200–1 Refund, Credit or Transfer Application: 20 minutes.

(2) FS–2200–2 Application for Temporary Grazing or Livestock Use Permit: 20 minutes.

(3) FS–2200–12 Waiver of Term Grazing Permit: 20 minutes.

(4) FS–2200–13 Escrow Waiver of Term Grazing Permit Privileges: 20 minutes.

(5) FS–2200–16 Application for Term Grazing Permit: 30 minutes.

(6) FS–2200–17 Application for Term Private Land Grazing Permit: 20 minutes.

(7) FS–2200–25 Ownership Statement by Corporation or Partnership: 20 minutes.

Type of Respondents: Grazing permittees; applicants seeking short-term grazing privileges; grazing permittees seeking to relinquish their grazing permits in favor of individuals who have acquired their base property and/or permitted livestock; individual grazing permittees who mortgage their base property and/or permitted livestock; individuals applying for a term grazing permit or term private land grazing permit; or corporations or partnerships applying for a grazing permit.

Estimated Annual Number of Respondents: 4,920.

Estimated Total Annual Burden on Respondents: 2300 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the 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 the use of automated , electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 11, 2005.

Frederick Norbury,

Associate Deputy Chief, National Forest System.

[FR Doc. 05–23050 Filed 11–21–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2004 projects and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). the meeting is open to the public.

DATES: The meeting will be held on November 22, 2005, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Dan Ritter, Acting District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Dan Ritter, Acting Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: November 15, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–23052 Filed 11–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on December 6, 2005 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on December 6. 2005 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Corrindator, USDA, Six River National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (701) 441–3549. e-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Topics to be discussed included the Coast to Crest and Caves Trail project and a status report of project funded in 2005. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: November 15, 2005.

Jeff Walter,

Forest Supervisor.

[FR Doc. 05–23053 Filed 11–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on December 2, 2005, in Quincy, CA. The primary purpose of the meeting is to review, discuss and refine Cycle 6 timelines and application materials, view a presentation on national RAC survey findings and consider recommending the Corridor Fuelbreak project to the Plumas National Forest Supervisor for funding approval.

DATES & ADDRESSES: The December 2, 2005 meeting will take place from 9–12 at the Mineral Building-Plumas/Sierra County Fairgrounds, 208 Fairgrounds Road, Quincy, CA.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the December 2 meeting include: (1) Forest Service Update; (2) Review, discuss, and refine Cycle 6 timelines and application materials; (3) Review Corridor project, discuss, and make a recommendation; (4) Presentation: national RAC survey findings; and (5) Future meeting schedule and agenda. The meetings are open to the public and individuals may address the Committee after being recognized by the Chair. Other RAC information including previous meeting agendas and minutes may be obtained at *http://wwwnotes.fs.fed.us:81/r4/payments_to_states.*

Dated: November 14, 2005.

Robert G. Macwhorter,

Deputy Forest Supervisor.

[FR Doc. 05–23063 Filed 11–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee (Committee) will meet in Washington, DC. The purpose of this first meeting is organizational in nature: The Committee members will meet for the first time, be welcomed by Department of Agriculture and Forest Service Leadership, institute administrative procedures and rules of order, and plan for future petition reviews.

DATES: The meeting will be held December 14th from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Forest Service's Yates Building at 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Garth Smelser, Committee Coordinator, at *gsmelser@fs.fed.us* or (202) 205–0992, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1104, Washington, DC 20250.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and interested parties are invited to attend; building security requires you to provide your name to the Committee Coordinator (contact information listed below) by December 2, 2005. You will need photo identification to enter the building. Because this first meeting is administrative, the Committee will not be addressing state petition submissions and, therefore, this meeting will not include public comment opportunities. Committee discussion is limited to Forest Service staff and Committee members. Future Committee meetings dealing with state petitions will afford public participation which will be outlined in future **Federal Register** notices. Committee documents, agendas, and minutes will be posted on the Forest Service's roadless Web site at *http://www.roadless.fs.fed.us.*

Dated: November 14, 2005.

Fredrick Norbury,

Associate Deputy Chief, National Foresty System.

[FR Doc. 05–23049 Filed 11–21–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Fork Licking River Watershed Licking, Perry, and Fairfield Counties, OH

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); The Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for South Fork of Licking River Watershed, Licking, Perry, Fairfield Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Terry Cosby, State Conservationist, Natural Resources Conservation Service; 200 North High Street; Room 522; Columbus, Ohio 43215–2478, telephone 614–259–2500.

SUPPLEMENTARY INFORMATION: The environmental reassessment of this previously approved federally assisted action indicates that the project might cause significant local, regional, or national impact on the environment. As a result of these findings, Terry Cosby, State Conservationist, has determined that the preparation and review of a supplemental environmental impact statement is needed for this project.

The project concerns are watershed protection and flood prevention. Alternatives under consideration are channel modification, installation of a by-pass channel, obstruction removal, the creation of a temporary flood water impoundment, and the installation of a dry dam.

A supplemental draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement.

Meetings will be held Thursday, December 15, 2005, from 2 to 4 p.m. and 7 to 9 p.m. at the Hebron Municipal Building, Hebron, Ohio, to determine the scope and evaluation of the proposed action. Further information on the proposed action or scoping meeting

may be obtained from Terry Cosby, State Conservationist, at the above address or telephone 614–259–2500.

Dated: November 16, 2005.

Terry J. Cosby,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires inter-governmental consultation with State and local officials).

[FR Doc. 05–23168 Filed 11–21–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Notice of Rescission of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 22, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Smith or Damian Felton, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1276 and (202) 482–0133, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1995, the Department of Commerce (''the Department'') published an antidumping duty order on furfuryl alcohol from Thailand. *See Notice of Amended Final Antidumping Duty Determination and Order: Furfuryl Alcohol from Thailand*, 60 FR 38035 (July 25, 1995).

On July 1, 2005, the Department published in the **Federal Register** an *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 70 FR 38099 (July 1, 2005). On July 19, 2005, the Department received a timely filed request for an administrative review of the antidumping duty order on furfuryl alcohol from Thailand with respect to Indorama Chemicals (Thailand) Ltd. (''IRCT'') from Penn Specialty Chemicals, Inc. (''petitioner''). On August 29, 2005, the Department published the initiation of an administrative review of IRCT covering the period July 1, 2004, through June 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005). This review covers imports of furfuryl alcohol from one producer/exporter, IRCT. On October 21, 2005, the petitioner timely withdrew its request for an administrative review of IRCT. The petitioner's request was the only request for an administrative review of IRCT's U.S. sales.

Scope of the Order

The merchandise covered by this order is furfuryl alcohol (C4H3OCH2OH). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Rescission of the Administrative Review

Pursuant to the Department's regulations, the Department will rescind an administrative review ''if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review''. *See* 19 CFR 351.213(d)(1). Since the petitioner withdrew its request for an administrative review on October 21, 2005, which is within the 90-day deadline, and no other party requested a review with respect to this company, the Department is rescinding this administrative review of IRCT in accordance with 19 CFR 351.213(d)(1).

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

The Department is issuing and publishing this notice in accordance with section 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4).

November 17, 2005.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–6443 Filed 11–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506, A–583–508]

Porcelain–on-Steel Cooking Ware from the People's Republic of China and Taiwan; Continuation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty orders on porcelain–on-steel cooking ware from the People's Republic of China (''PRC'') and Taiwan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of this antidumping duty order.

EFFECTIVE DATE: November 22, 2005.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–3020.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department initiated sunset reviews of the antidumping duty orders on Porcelain–on-Steel Cooking Ware from the PRC and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 9919 (March 1, 2005). As a result of its review, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of margins likely to prevail were the orders to be revoked. *See Porcelain-on-Steel Cooking Ware from the People's Republic of China and*

Taiwan, Five-Year (''Sunset'') Reviews of Antidumping Duty Orders; Final Results, 70 FR 58187 (October 5, 2005). On October 14, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on Porcelain–on-Steel Cooking Ware from the PRC and Taiwan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Porcelain–on-Steel Cooking Ware From China and Taiwan; Top–of-the–Stove Stainless Steel Cooking Ware From Korea and Taiwan (Investigations Nos. 731–TA–298 and 299 (Second Review); Investigations Nos. 701–TA–267 and 268 and 731–TA–304 and 305 (Second Review))*, 70 FR 67740 (November 8, 2005).

Scope of the Orders

PRC

The merchandise covered by this order is porcelain–on-steel cooking ware from the PRC, including tea kettles, which do not have self–contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the United States Harmonized Tariff Schedule (''USHTS'') item 7323.94.00. USHTS items numbers are provided for convenience and customs purposes. The written description of the scope remains dispositive.

In response to a request from CGS International, on January 30, 1991, the Department clarified that high quality, hand finished cookware, including the small basin, medium basin, large basin, small colander, large colander, 8'' bowl, 6'' bowl, mugs, ash tray, napkin rings, utensil holder and utensils, ladle, cream & sugar, and mixing bowls are properly considered kitchen ware and are, therefore, outside the scope of the order. Further, the Department clarified that CGS International's casserole, 12–cup coffee pot, 6–cup coffee pot, roasting pan, oval roaster, and butter warmer are within the scope of the order (*see Notice of Scope Rulings*, 56 FR 19833 (April 30, 1991)).

In response to a request from Texsport, on August 8, 1990, the Department determined that camping sets, with the exception of the cups and plates included in those sets, are within the scope of the order (*see Notice of Scope Rulings*, 55 FR 43020 (October 25, 1990)).

On March 8, 2000, Tristar Products' grill set with aluminum grill plate was found to be outside the scope of the order (*see Notice of Scope Rulings*, 65 FR 41957 (July 7, 2000)).

On October 29, 2003, Target Corporation's certain enamel–clad beverage holders and dispensers were found to be outside the scope of the order (*see Notice of Scope Rulings*, 70 FR 24533 (May 10, 2005)).

On January 4, 2005, Taybek International's Pro Popper professional popcorn popper was found to be within the scope of the order (*see Notice of Scope Rulings*, 70 FR 41374 (July 19, 2005)).

Taiwan

The merchandise covered by this order is porcelain–on-steel cooking ware from Taiwan that do not have self–contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchen ware and teakettles are not subject to this order. The merchandise is currently classifiable under the USHTS item number 7323.94.00. The USHTS subheading is provided for convenience and customs purposes. The written description of the scope remains dispositive.

On August 23, 1990, in response to a request from RSVP, BBQ grill baskets were found to be outside the scope of the order (*see Notice of Scope Rulings*, 55 FR 43020 (October 25, 1990)).

On September 3, 1992, in response to a request from Mr. Stove Ltd., stove top grills and drip pans were found to be outside the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)).

On September 25, 1992, in response to a request from Metrokane Inc., the ''Pasta Time'' pasta cooker was found to be within the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)).

On August 18, 1995, Blair Corporation's Blair cooking ware items #1101 (seven piece cookware set), #271911 (eight–quart stock pot), and #271921 (twelve–quart stock pot) were found to be outside the scope of the order (*see Notice of Scope Rulings*, 60 FR 54213 (October 20, 1995)).

On October 30, 1996, Cost Plus, Inc.'s 10 piece porcelain–on-steel fondue set was found to be within the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1997)).

Determination

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on Porcelain–on-Steel Cooking Ware from the PRC and Taiwan. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five–year review of these orders not later than October 2010.

These five–year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: November 15, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–6442 Filed 11–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Notice of Intent to Rescind Antidumping Duty Administrative Review of Ferro Alloys Corporation Limited

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India for the period February 1, 2004, through January 31, 2005. The Department intends to rescind this review with respect to Ferro Alloys Corporation Limited after concluding that no entries of subject merchandise were made during the period of review.

EFFECTIVE DATE: November 22, 2005.

FOR FURTHER INFORMATION CONTACT: Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3853.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department of Commerce (''the Department'') published a notice in the **Federal Register** providing an opportunity for interested parties to request an administrative review of the antidumping duty order on stainless steel bar (''SSB'') from India for the period February 1, 2004, through January 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 5136. On February 22, 2005, we received a timely request for review from Shah Alloys Ltd. (''Shah'').[1] On February 25, 2005, we received a timely request for review and revocation from Venus Wire Industries Pvt. Limited (''Venus''). On February 28, 2005, we received timely review requests from Ferro Alloys Corporation Limited (''Facor''), Chandan Steel Limited (''Chandan''), Isibars Limited (''Isibars''), Mukand Limited (''Mukand''), and the Viraj Group (''Viraj'').[2] On February 28, 2005, Carpenter Technology Corporation, Electralloy Corporation, and Crucible Specialty Metals Division, Crucible Materials Corporation (collectively, ''the petitioners'') also requested an administrative review of Viraj. On March 23, 2005, the Department initiated an administrative review of the antidumping duty order on SSB from India with respect to Facor, Chandan, Isibars, Mukand, and Venus.[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643.

On March 29, 2005, the Department issued its antidumping duty questionnaire to Facor. On May 4, 2005, and May 31, 2005, after being granted a series of extensions, Facor filed its responses to section A and sections B–D of the Department's antidumping duty questionnaire, respectively. Upon reviewing Facor's questionnaire responses, the Department learned that Facor had no entries of subject merchandise during the period of review, February 1, 2004, through January 31, 2005 (''POR'').

On June 9, 2005, and October 5, 2005, the Department issued supplemental questionnaires to Facor requesting additional information on Facor's U.S. sales process and date of sale. On June 16, 2005, and October 19, 2005, Facor filed its responses to the Department's supplemental questionnaires.

To confirm that Facor made no entries of subject merchandise during the POR, the Department requested data from U.S. Customs and Border Protection (''CBP'') on July 26, 2005. CBP provided the Department with the requested data on September 8, 2005. This data was placed on the record on September 26, 2005. *See* Memorandum to the File, ''U.S. Customs and Border Protection Data,'' dated September 26, 2005.

Scope of the Order

Merchandise covered by the order is shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut–to-length flat–rolled products (*i.e.*, cut–to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes, and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this proceeding. See Memorandum to Barbara E. Tillman, Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling (May 23, 2005).

Intent to Rescind the Administrative Review of Facor

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930 (as amended) (''the Act''), when conducting an administrative review, the Department examines entries of subject merchandise. According to 19 CFR 351.213(d)(3), the Department will rescind an administrative review in whole or only with respect to a particular exporter or producer, if we conclude that during the POR, there were no entries, exports, or sales of the subject merchandise, as the case may be. The Department has interpreted the statutory and regulatory language as requiring ''that there be entries during the period of review upon which to assess antidumping duties.'' *Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44088, 44088 (Aug. 1, 2005). Moreover, in *Chia Far Industrial Factory Co., Ltd., v. United States*, 343 F. Supp. 2d 1344, 1374 (CIT Aug. 2, 2004), the Court affirmed the Department's rescission of a review for lack of entries (''Commerce correctly decided to rescind Ta Chen's review based on the fact that there were no entries of the merchandise at issue during the POR, regardless of whether there were sales.'').

In this administrative review, Facor reported no entries of subject merchandise to the U.S. market during the POR, a fact which the Department confirmed by conducting an inquiry with CBP. Even if the Department's practice were to review sales, as opposed to entries, Facor had no sales during the POR. In its questionnaire responses, Facor argued that the Department should use the purchase order date, as opposed to the invoice date, as the U.S. date of sale. However, the Department's rebuttable presumption is to use the invoice date as the date of sale. See 19 CFR 351.401(i). Facor failed to provide a

[1] On February, 28, 2005, the Department declined Shah's request for review because Shah explicitly stated in its request that it did not have any export sales to the United States during the period of review.

[2] We did not initiate with respect to Viraj because the order for this company was revoked on September 14, 2004. *See* Letter from the Department to Peter J. Koenig, Esq. (counsel to Viraj), ''Extension Requests,'' dated April 19, 2005; *see also Stainless Steel Bar From India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 69 FR 55409 (Sept. 14, 2004); *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (Mar. 23, 2005).

[3] This **Federal Register** notice only pertains to the Department's intent to rescind the current administrative review with regard to Facor. Therefore, this notice will not discuss developments in the administrative review with respect to Chandan, Isibars, Mukand, or Venus.

compelling reason for the Department to deviate from its standard practice. According to information on the record, Facor issued no sales invoices to the United States during the POR. As Facor had no U.S. sales or entries during the POR, the Department intends to rescind the current administrative review with respect to Facor.

Public Comment

Interested parties may comment on the Department's intent to rescind the administrative review with respect to Facor. Comments will be considered in the Department's preliminary results, which are currently due on February 28, 2006.

This notice is published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 15, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–6445 Filed 11–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–583–604]

Revocation of Countervailing Duty Order: Top–of-the–Stove Stainless Steel Cookware from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') determined that revocation of the countervailing duty (''CVD'') order on top–of-the–stove stainless steel (''TOS'') cookware from Taiwan would not be likely to lead to continuation or recurrence of dumping or material injury to an industry in the United States, and the Department is publishing this notice of revocation of the CVD order.

EFFECTIVE DATE: April 18, 2005.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Goldberger, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1767 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1986, the Department published its final affirmative CVD determination on TOS cookware from Taiwan in the **Federal Register**. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan*, 51 FR 42891 (November 26, 1986). In the final determination the Department found an estimated net subsidy of 2.14 percent *ad valorem* for all manufacturers/producers/exporters of TOS cookware from Taiwan. On September 3, 1999, the Department published the final results of its first five-year sunset review and determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a net countervailable subsidy of 2.14 percent *ad valorem*. *See Top–of-the–Stove Stainless Steel Cookware from Taiwan*, 64 FR 48372 (September 3, 1999). After an affirmative determination by the ITC, on April 18, 2000, the Department published the notice of continuation of the order. *See Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Top–of-the–Stove Stainless Steel Cooking Ware From Taiwan and Korea*, 65 FR 20801 (April 18, 2000).

On March 1, 2005, the Department initiated, and the ITC instituted, sunset reviews of the CVD order on TOS cookware from Taiwan. *See Notice of Initiation of Five-year (''Sunset'') Reviews*, 70 FR 9919 (March 1, 2005). As a result of its review, the Department found that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy, and notified the ITC of the net countervailable subsidy likely to prevail were the order to be revoked. *See Final Results of Expedited Sunset Review of Countervailing Duty Order: Top–of-the–Stove Stainless Steel Cookware from Taiwan*, 70 FR 57856 (October 4, 2005).

On November 8, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the CVD order on TOS cookware from Taiwan would not likely lead to continuation or recurrence of material injury to an industry in the United States. *See Porcelain–on-Steel Cooking Ware From China and Taiwan; Top–of-the–Stove Stainless Steel Cooking Ware From Korea and Taiwan*, 70 FR 67740 (November 8, 2005) and USITC Publication 3808 (October 2005), entitled *Porcelain–on-Steel Cooking Ware From China and Taiwan, and Top–of-the–Stove Stainless Steel Cooking Ware From Korea and Taiwan* (Investigation Nos. 731–TA–298 and 299 (Second Review) and Investigation Nos. 701–TA–267 and 268 and 731–TA–304 and 305 (Second Review)).

Scope of the Order

The merchandise subject to this CVD order is TOS cookware from Taiwan. The subject merchandise is all non–electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers.

Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. ''Universal pan lids'' are not within the scope of the order (57 FR 57420, December 4, 1992).

TOS cookware is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determination by the ITC that revocation of this CVD order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the CVD order on TOS cookware from Taiwan. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is April 18, 2005 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation of the CVD order). The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after April 18, 2005, the effective date of revocation of the CVD order. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year sunset review and notice are in accordance with section 751(d)(2) and published pursuant to section 777(i)(1) of the Act.

Dated: November 15, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–6441 Filed 11–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–602]

Continuation of Countervailing Duty Order: Top–of-the–Stove Stainless Steel Cookware from South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the countervailing duty (''CVD'') order on top–of-the–stove stainless steel cookware (''TOS cookware'') from South Korea (''Korea'') would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of the CVD order.

EFFECTIVE DATE: November 22, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown or David Goldberger, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2849 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department initiated and the ITC instituted a sunset review of the CVD order on TOS cookware from Korea pursuant to sections 751(c) and 752 of the Act, respectively. *See Notice of Initiation of Five-year (''Sunset'') Reviews*, 70 FR 9919 (March 1, 2005). As a result of its review, the Department found the revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy and notified the ITC of the subsidy rate likely to prevail were the order to be revoked. *See Final Results of Expedited Sunset Review of Countervailing Duty Order: Top–of-the–Stove Stainless Steel Cookware from South Korea*, 70 FR 57856 (October 4, 2005).

On November 8, 2005, the ITC determined that revocation of the CVD order on TOS cookware from Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. *See Porcelain–on-Steel Cooking Ware From China and Taiwan; Top–of-the–Stove Stainless Steel Cooking Ware From Korea and Taiwan*, 70 FR 67740 (November 8, 2005) and USITC Publication 3808 (October 2005), entitled *Porcelain–on-Steel Cooking Ware From China and Taiwan, and Top–of-the–Stove Stainless Steel Cooking Ware From Korea and Taiwan* (Investigation Nos. 731–TA–298 and 299 (Second Review) and Investigation Nos. 701–TA–267 and 268 and 731–TA–304 and 305 (Second Review)).

Scope of the Order

The merchandise subject to this CVD order is TOS stainless steel cookware from Korea. The subject merchandise is all non–electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers.

Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. Certain stainless steel pasta and steamer inserts and certain stainless steel eight–cup coffee percolators are within the scope (63 FR 41545 (August 4, 1998) and 58 FR 11209 (February 24, 1993), respectively).

Moreover, as a result of a changed circumstances review, the Department revoked the order in part with regards to certain stainless steel camping ware that: (1) is made of single–ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consists of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 32767, June 17, 1997).

TOS cookware is currently classifiable under Harmonized Tariff Schedule (''HTS'') item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of this CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the CVD order on TOS cookware from Korea. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation.

Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than October 2010.

This five -year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 771(i)(1) of the Act.

Dated: November 15, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–6444 Filed 11–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111605F]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council's (Council) Guideline Harvest Level (GHL) Committee.

SUMMARY: The Council's GHL Committee will meet December 8, 2005 at the Hilton Hotel.

DATES: The meeting will be held on December 8, 2005, 6 p.m., Dillingham/Katmai.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: This will be an organizational meeting for the Committee, which would include a discussion of: charge of the Committee, future meeting dates/locations and information needs.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 17, 2005.

Emily Menashes,

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

[FR Doc. E5–6440 Filed 11–21–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the African Growth and Opportunity Act

November 16, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Directive to the Commissioner, Bureau of Customs and Border Protection.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Sierra Leone shall be treated as ''handloomed, handmade, folklore articles, or ethnic printed fabrics'' and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Sierra Leone with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: November 28, 2005

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (''AGOA''), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (''AGOA Acceleration Act'') (19 U.S.C. §§ 3721(a) and (b)(6)); Sections 2 and 5 of Executive Order No. 13191 of January 17, 2001; Sections 25-27 and Paras. 13-14 of Presidential Proclamation 7912 of June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including hand-loomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further expanded AGOA by adding ethnic printed fabrics to the list of textile and apparel products made in the beneficiary sub-Saharan African countries that may be eligible for the preferential treatment described in section 112(a) of the AGOA. In Executive Order 13191 (January 17, 2001) and Presidential Proclamation 7912 (June 29, 2005), the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being hand-loomed, handmade, folklore articles, or ethnic printed fabrics. (66 FR 7271-72 and 70 FR 37951, 37961 & 63)

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping ''9'' is reserved for handmade, hand-loomed, folklore articles, or ethnic printed fabrics.

CITA has consulted with Sierra Leonean authorities and has determined that hand-loomed fabrics, hand-loomed articles (e.g., hand-loomed rugs, scarves, place mats, and tablecloths), handmade articles made from hand-loomed fabrics, and the folklore articles described in Annex A to this notice, if produced in and exported from Sierra Leone, are eligible for preferential tariff treatment under section 112(a) of the AGOA, as amended. After further consultations with Sierra Leonean authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles or ethnic printed fabrics. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping ''9''.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 2005.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (''CITA''), pursuant to Sections 112(a) and (b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (''AGOA''), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (''AGOA Acceleration Act'') (19 U.S.C. §§ 3721(a) and (b)(6)), Executive Order No. 13191 of January 17, 2001, and Presidential Proclamation 7912 of June 29, 2005, has determined, effective on November 28, 2005, that the following articles shall be treated as ''handloomed, handmade, folklore articles, and ethnic printed fabrics'' under the AGOA: (a) handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, placemats, and tablecloths), and hand-made articles made from handloomed fabrics, if made in Sierra Leone from fabric handloomed in Sierra Leone; and (b) the folklore articles described in Annex A if made in Sierra Leone. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping ''9'', in accordance with the provisions of the Visa Arrangement between the Government of Sierra Leone and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After further consultations with Sierra Leonean authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles or ethnic printed fabrics.

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

Attachment

ANNEX A: Sierra Leonean Folklore Products

CITA has determined that the following textile and apparel goods shall be treated as folklore articles for purposes of the AGOA if made in Sierra Leone. Articles must be ornamented in characteristic Sierra Leonean or regional folk style. An article may not include modern features such as zippers, elastic, elasticized fabrics, snaps, or hook-and-pile fasteners (such as velcro© or similar holding fabric). An article may not incorporate patterns that are not traditional or historical to Sierra Leone, such as airplanes, buses, cowboys, or cartoon

characters and may not incorporate designs referencing holidays or festivals not common to traditional Sierra Leonean culture, such as Halloween and Thanksgiving.

Eligible folklore articles:

(a) Country Cloth: Strips of handloomed fabric, hand or machine sewn together to make a larger piece of fabric, dyed with natural dyes, striped. Dimensions depend on use (blankets are usually 3 meters x 2.4 meters, or may vary to smaller sizes, and body wraps standard dimensions are 1.8 meters x 1 meter).

(b) Country Cloth Smocks: Made of country cloth described in (a), traditional sleeveless garments, may come with matching hat, round neckline with a slit down the center front. Garments typically have a center chest pocket immediately below the neckline, and side patch pockets may be present. If embroidered, it is usually around the neckline and pockets. May come with or without matching brimless cap with a flat top and cylindrical side or headwrap/scarf.

(c) Kabaslot: Primarily worn by ''Creoles'', this cotton ladies' dress is a loose-fitting garment with matching scarf of colorful cotton printed fabric. The body is pleated from the imperial waistline down. Necklines may be square or be in an asymmetrical zigzag decorative pattern. Sleeves are three-quarter length, with ruffles around the cuff. The bottom of garment has a decorative ruffle sewn just above the bottom hem. Garment has side pockets. Garment may be heavily decorated with embroidery around the neckline, pockets and back shoulder.

(d) Ronko Smocks: This loose fitting garment, is made of handloomed cotton strips of fabric, and dyed with natural dyes, usually a deep brown from the kola nut. May be a solid dark color, or dark brown with geometric black patterns. The three-quarter length upper garment is sleeveless or has half to three-quarter length sleeves that are open at the bottom. The smock has a center chest pocket immediately below the neckline, and may or may not have side-seam pockets. Garment comes with matching brimless cap with a flat top and cylindrical side.

[FR Doc. 05–23105 Filed 11–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0139]

Federal Acquisition Regulation; Submission for OMB Review; Federal Acquisition and Community Right-To-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Federal acquisition and community right-to-know. A request for public comments was published in the **Federal Register** at 70 FR 54035, September 13, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 22, 2005.

FOR FURTHER INFORMATION CONTACT Ms. Kimberly Marshall, Contract Policy Division, GSA, at (202) 219–0986.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 23.9 and its associate solicitation provision and contract clause implement the requirements of E.O. 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), ''Federal Acquisition and Community Right-to-Know,'' and the Environmental Protection Agency's ''Guidance Implementing E.O. 12969; Federal Acquisition Community Right-to-Know; Toxic Chemical Release Reporting'' (60 FR 50738, September 29, 1995). The FAR coverage requires offerors in competitive acquisitions over $100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 USC 11001–11050) and the Pollution Prevention Act of 1990 (42 USC 13101–13109).

B. Annual Reporting Burden

Respondents: 167,487.
Responses Per Respondent: 1.
Annual Responses: 167,487.
Hours Per Response: 0.50.
Total Burden Hours: 83,744.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: November 16, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. 05–23085 Filed 11–21–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–13]

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 06–13 with attached transmittal and policy justification.

Dated: November 16, 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

14 NOV 2005
In reply refer to:
I-05/010144

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. 06-13, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to India for defense articles and services estimated to cost $133 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-13

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:** India

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$133 million
TOTAL	$133 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** logistics support for two leased P-3C aircraft. Also included are training devices, support and test equipment, engineering technical services, supply support, operation and maintenance training, documentation, spare/repair parts, publications, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements.

(iv) **Military Department:** Navy (GAH)

(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:** none

(viii) **Date Report Delivered to Congress:** 14 NOV 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India – Logistic Support for P-3C Aircrafts

The Government of India has requested a possible sale of logistics support for two leased P-3C aircraft. Also included are training devices, support and test equipment, engineering technical services, supply support, operation and maintenance training, documentation, spare/repair parts, publications, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements. The estimated cost is $133 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an important ally and to strengthen the U.S.-India strategic partnership, which continues to be an important force for political stability, peace, and economic progress in South Asia.

The two leased P-3 aircraft will replace two existing Indian Navy patrol aircraft, Soviet built IL-38 May aircraft, which are quickly reaching the end of their fatigue and operational service life. To maintain security, it is necessary that India replace these fixed-wing aircraft with an airborne operational capability for land-based maritime patrol and reconnaissance, including: economic exclusion zone surveillance and protection; command and control (C^2); Anti-Submarine warfare; and anti-surface warfare. Modernization will enhance the capabilities of the Indian Navy, support its regional influence and meet its legitimate self-defense needs. India is capable of absorbing and maintaining these additional aircraft in its inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be:

Lockheed Martin	Eagan, Minnesota
Lockheed Martin Aircraft Center	Greenville, South Carolina
Logistics Support International, Inc.	Jacksonville, Florida

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require technical assistance prior to the delivery of the first aircraft and continued involvement by U.S. and contractor representatives to India for three years. There will be several U.S. Government and contractor representatives for two-week intervals twice annually to participate in training, program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–23069 Filed 11–21–05; 8:45am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on December 8, 2005 from 0900 to 2000 and December 9, 2005 from 0830 to 1400.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: November 15, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–23066 Filed 11–21–05; 8:45 am]

BILLING CODE 5000–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Missile Defense Advisory Committee (MDAC)

AGENCY: Missile Defense Agency (MDA), DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Missile Defense Advisory Committee will meet in closed session on December 1–2, 2005, in Washington, DC.

The mission of the Missile Defense Advisory Committee is to provide the Department of Defense advice on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations of the Ballistic Missile Defense System (BMDS) to enter the acquisition process. At this meeting, the Committee will hold receive classified status reports on offensive-defensive integration; centralized and decentralized management; threat 2015–2025; capability-based acquisition; and cruise missile defense.

FOR FURTHER INFORMATION CONTACT: COL David R. Wolf, Designated Federal Official (DFO) at *david.wolf@mda.mil*, phone/voice mail (703) 695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Missile Defense Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: November 16, 2005.

L.M. Bynum,

OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 05–23065 Filed 11–21–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 99–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to discuss the 2005 DACOWITS Report. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for reconsideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than 5 p.m., 28 November 2005. Oral presentations by members of the public will be permitted only on Monday, 5 December 2005 from 4 p.m. to 4:15 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 5 p.m., 28 November 2005 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on 28 November 2005.

DATES: December 5, 2005, 8:30 a.m.–5 p.m.; December 6, 2005, 8:30 a.m.–5 p.m.; December 7, 2005, 8:30 a.m.–5 p.m.

ADDRESSES: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Gerald Posey, USAF DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Monday, 5 December 2005, 8:30 a.m.–5 p.m.

Review and Vote on 2005 DACOWITS Report Recommendations.

Public Forum.

Evening Farewell Event for Departing Members.

Tuesday, 6 December 2005, 8:30 a.m.–5 p.m.

Brief OSD Leadership on 2005 Findings and Recommendations.

Lessons Learned 2002–2005.

Wednesday, 7 December 2005, 8:30 a.m.–5 p.m.

New Member Training.

Note: Exact order may vary.

Dated: November 16, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–23067 Filed 11–21–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 19, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 9, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (MB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 14, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

S180.15

SYSTEM NAME:

DLA Hometown News Releases.

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency, Public Affairs Office, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the Public Affairs Offices of the Defense Logistics Agency (DLA) Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA military and civilian employees who request a Hometown News Release.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information submitted on DD Form 2266, entitled ''Hometown News Release Information.'' Information includes name, local address, last five digits of Social Security Number, branch of service, status, rank, pay grade, gender, newsworthy event, marital status, names and addresses of relatives (parents, stepparents, guardians, aunts/uncles, grandparents, and adult siblings), present unit of assignment, job title, years of military service, education data, and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; 10 U.S.C 136, Under Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN).

PURPOSE(S):

Information is collected and maintained for the purpose of distributing information on activities and accomplishments of DLA military and civilian personnel to hometown newspapers and broadcast stations throughout the United States using the Army and Air Force Hometown News Service. Release of this information is done with the individual's full cooperation and consent.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

Information is released to hometown newspapers and broadcast stations throughout the United States using the Army and Air Force Hometown News Service for the purpose of showcasing the activities and accomplishments of the DLA military or civilian member.

The DoD 'Blanket Routine Uses' that appear at the beginning of the DLA's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and on electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to computerized data is restricted by passwords, which are changed periodically. Data sent by DLA Public Affairs Officers to the Army and Air Force Hometown News Service is over a secure connection. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Disposition pending. (Until the National Archives and Records Administration has approved the disposition of these records, treat them as permanent).

SYSTEM MANGER(S) AND ADDRESS:

Director, DLA Public Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the Heads of the Public Affairs Offices within each DLA Field Activity. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act office of the DLA field activity where assigned. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices. Individuals must provide their full name, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act office of the DLA field activity where assigned. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices. Individuals must provide their full name, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23068 Filed 11–21–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 22, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on November 9, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 14, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

N01500–2

SYSTEM NAME:

Student/SMART/VLS Records (March 7, 2002, 67 FR 10389).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry replace with: ''NM01500–2''

SYSTEM NAME:

Delete entry and replace with: ''Department of the Navy (DON) Education and Training Records.''

SYSTEM LOCATION:

Add the following paragraph at end of entry: ''Student and individual Marine training and education records are maintained in the Training and Education Command (TECOM) Integrated Management System (TIMS) database located at the USMC (TECOM), 3300 Russell Road, Quantico VA 22134–5001.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add the following paragraph at end of entry: ''TIMS records include the student records for Marines and other service students attending Marine schools, Marine students attending other service's schools, Marine's classes/courses from educational institutions, and the record of each Marines' training and education in an individual electronic training jacket for active and reserve Marine Corps personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Add the following paragraph at end of entry: ''TIMS records: Includes student records data as shown above, the individual record of ''all things training and education'' for each Marine in a individual Electronic Training Jacket, the assignment to ''promotion points'' for specific completed training course and identifies the skills, proficiencies and courses/classes for current and higher MOS requirements.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).''

PURPOSE(S):

Add the following paragraph at end of entry: ''TIMS records: To provide a database of student records for students attending Marine schools and courses, for Marines attending other service's schools, Marines attending/completing educational institution courses/classes, and to provide an individual record of ''all things training and education'' for Marine active duty and reserve personnel. Provides the individual Electronic Training Jacket that can be accessed against the unit morning report allowing evaluation against the MOS Roadmap for individual training assessment and requirements. At the unit level, allowing the evaluation of the assigned personnel training assessment against the Marine Corps Training and Readiness Manuals for automated Unit Training Management support, automated unit training readiness assessment, and the determination of unit combat readiness percentage.''

* * * * *

STORAGE:

Delete entry and replace with: ''Manual and automated records.''

* * * * *

RETENTION AND DISPOSAL:

Add the following paragraph at end of entry: ''For TIMS Records: Automated TIMS records are retained permanently. The records are utilized for near term and historical assessments including training schools/courses, recruit selection criteria, training requirements, individual course completion, school training through-put, and student attrition.''

SYSTEM MANAGER(S) AND ADDRESS:

Add the following paragraph at end of entry: ''For TIMS Records: Commanding General, Training and Education Command, Attn: TIMS Program Manager, 3300 Russell Road, Quantico, VA 22134–5001.''

NOTIFICATION PROCEDURE:

Add the following paragraph at end of entry: ''For TIMS records: Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding General, Training and Education Command, Attn: TIMS Program Manager, 3300 Russell Road, Quantico, VA 22134–5001. Requester should provide a signed request that includes their full name, Social Security Number, military, civilian, or contractor duty status, if applicable, and other data when appropriate, such as graduation date.''

RECORD ACCESS PROCEDURES:

Add the following paragraph at end of entry: ''For TIMS records: Requester should address inquiries to the Commanding General, Training and Education Command, Attn: TIMS Program Manager, 3300 Russell Road, Quantico, VA 22134–5001. Requester should provide a signed request that includes their full name, Social Security Number, military, civilian, or contractor duty status, if applicable, and other data when appropriate, such as graduation date.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''Individual; schools and educational

institutions; Navy Personnel Command; Naval Education and Training Command; Headquarters, Marine Corps; Naval Special Warfare Center; Navy Recruiting Command; USMC Training and Education Command; and instructor personnel.''

* * * * *

NM01500–2

SYSTEM NAME:

Department of the Navy (DON) Education and Training Records.

SYSTEM LOCATION:

Student records are located at schools and other training activities or elements of the Department of the Navy and Marine Corps. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Sailor/Marine American Council on Education Registry Transcript (SMART) data base is maintained at the Naval Educational and Training Professional Development Technology Center, Code N6, 6490 Saufley Field Road, Pensacola, FL 32509–5237.

Vertical Launch System (VLS) records are maintained at the Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, CA 93043–4307.

Student and individual Marine training and education records are maintained in the Training and Education Command (TECOM) Integrated Management System (TIMS) database located at the USMC (TECOM), 3300 Russell Road, Quantico, VA 22134–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Student records cover present, former, and prospective students at Navy and Marine Corps schools and other training activities or associated educational institution of Navy sponsored programs; instructors, staff and support personnel; participants associated with activities of the Naval Education and Training Command, including the Navy College Office and other training programs; tutorial and tutorial volunteer programs; dependents' schooling.

SMART records cover Active duty Navy and Marine Corps members, reservists, and separated or retired Navy and Marine Corps members.

VLS records cover civilians, active duty Navy members, and Department of the Navy contractors.

TIMS records include the student records for Marines and other service students attending Marine schools, Marine students attending other service's schools, Marine's classes/courses from educational institutions, and the record of each Marines' training and education in an individual electronic training jacket for active and reserve Marine Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student records: Schools and personnel training programs administration and evaluation records. Such records as basic identification records i.e., Social Security Number, name, sex, date of birth, personnel records i.e., rank/rate/grade, branch of service, billet, expiration of active obligated service, professional records i.e., Navy enlisted classification, military occupational specialty for Marines, subspecialty codes, test scores, psychological profile, basic test battery scores, and Navy advancement test scores. Educational records i.e., education levels, service and civilian schools attended, degrees, majors, personnel assignment data, course achievement data, class grades, class standing, and attrition categories. Academic/training records, manual and mechanized, and other records of educational and professional accomplishment.

SMART records: Certified to be true copies of service record page 4; certificates of completion; college transcripts; test score completions; grade reports; Request for Sailor/Marine American Council on Education Registry Transcript.

VLS records: Name, quiz scores, homework scores, and test scores. In those instances when the student has performed below the minimum requirements, copies of the minutes of the Academic Review Board will be included.

TIMS records: Includes student records data as shown above, the individual record of ''all things training and education'' for each Marine in a individual Electronic Training Jacket, the assignment to ''promotion points'' for specific completed training course and identifies the skills, proficiencies and courses/classes for current and higher MOS requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

Student records: To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; provide guidance and counseling to students; prepare required reports; and for other training administration and planning purposes.

SMART records: To provide recommended college credit based on military experience and training to colleges and universities for review and acceptance. Requesters may have information mailed to them or the college(s)/university(ies) of their choice.

VLS records: To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; and provide guidance and counseling to students.

TIMS records: To provide a database of student records for students attending Marine schools and courses, for Marines attending other service's schools, Marines attending/completing educational institution courses/classes, and to provide an individual record of ''all things training and education'' for Marine active duty and reserve personnel. Provides the individual Electronic Training Jacket that can be accessed against the unit morning report allowing evaluation against the MOS Roadmap for individual training assessment and requirements. At the unit level, allowing the evaluation of the assigned personnel training assessment against the Marine Corps Training and Readiness Manuals for automated Unit Training Management support, automated unit training readiness assessment, and the determination of unit combat readiness percentage.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's Compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Manual and automated records.

RETRIEVABILITY:

Records are retrieved by name and Social Security Number.

SAFEGUARDS:

Access is provided on a 'need-to-know' basis and to authorized personnel only. Records are maintained in

controlled access rooms or areas. Data is limited to personnel training associated information. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers. Information provided via batch processing is of a predetermined and rigidly formatted nature. Output is controlled by the functional managers who also control the distribution of output.

RETENTION AND DISPOSAL:

Student records: Destroyed after completion of training, transfer, or discharge, provided the data has been recorded in the individual's service record or on the student's record card.

SMART records: Automated SMART (transcripts) are retained permanently. Documents submitted to compile, update, or correct SMART records, which include service record page 4s, transcripts, and certificates, are destroyed after 3 years.

VLS records: Destroyed 2 years after completion of training.

TIMS Records: Automated TIMS records are retained permanently. The records are utilized for near term and historical assessments including training schools/courses, recruit selection criteria, training requirements, individual course completion, school training through-put, and student attrition.

SYSTEM MANAGER(S) AND ADDRESS:

For student records: The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

For SMART records: Director, Navy College Center (N2A5), 6490 Saufley Field Road, Pensacola, FL 32509–5204.

For VLS records: Department Manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division, 4363 Missile Way, Port Hueneme, CA 93043–4307.

For TIMS Records: Commanding General, Training and Education Command, Attn: TIMS Program Manager, 3300 Russell Road, Quantico, VA 22134–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate official below.

For student records: Address inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Requester should provide his full name, Social Security Number, military or civilian duty status, if applicable, and other data when appropriate, such as graduation date. Visitors should present drivers license, military or Navy civilian employment identification card, or other similar identification.

For SMART records: Requester should address inquiries to the Director, Navy College Center (N2A5), 4690 Saufley Field Road, Pensacola, FL 32509–5204. Send a completed ''Request for Sailor/Marine American Council on Education Registry Transcript'' which solicits full name, command address, current rate/rank, Social Security Number, home and work telephone numbers, current status branch of service, etc., and must be signed.

For VLS records: Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Department Manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, CA 93043–4307. Requester should provide full name, Social Security Number, military, civilian, or contractor duty status, if applicable, and other data when appropriate, such as graduation date.

For TIMS records: Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding General, Training and Education Command, Attn: TIMS Program manager, 3300 Russell Road, Quantico, VA 22134–5001. Requester should provide a signed request that includes their full name, Social Security Number, military, civilian, or contractor duty status, if applicable, and other data when appropriate, such as graduation date.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the appropriate official below:

For student records: Address inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Requester should provide his full name, Social Security Number, military or civilian duty status, if applicable, and other data when appropriate, such as graduation date. Visitors should present drivers license, military or Navy civilian employment identification card, or other similar identification.

For SMART records: Requester should address inquiries to the Director, Navy College Center (N2A5), 6490 Saufley Field Road, Pensacola, FL 32509–5204. Sned a completed ''Request for Sailor/Marine American Council on Education Registry Transcript'' which solicits full name, command address, current rate/rank, Social Security Number, home and work telephone numbers, current status branch of service, etc., and must be signed.

For VLS records: Requester should address inquires to the Department manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, Ca 9303–4307. Requester should provide full name, Social Security Number, military, civilian or contractor duty status, if applicable, and other data when appropriate, such as graduation date.

For TIMS records: Requester should address inquires to the Commanding General, Training and Education Command, Attn: TIMS Program Manager, 3300 Russell Road, Quantico, VA 22134–5001. Requester should provide a signed request that includes their full name, Social Security Number, military, civilian, or contractor duty status, if applicable, and other data when appropriate, such as graduation date.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; schools and educational institutions; Navy Personnel Command; Naval Education and Training Command; Headquarters, Marine Corps; Naval Special Warfare Center; Navy Recruiting Command; USMC Training and Education Command; and instructor personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23071 Filed 11–21–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 22, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on November 9, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

November 14, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

N01650–1

SYSTEM NAME:

Navy Military Awards System (November 16, 2004, 69 FR 67128).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry replace with: ''NM01650–1''

SYSTEM NAME:

Delete ''Navy'' and replace with ''Department of the Navy (DON)''.

SYSTEM LOCATION:

Delete entry and replace with: ''Chief of Naval Operations (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000; Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, VA 22134–5103; and organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.''*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''All recipients of Navy and Marine Corps personal awards, to include the U.S. Coast Guard, Navy, and Marine Corps military personnel who receive personal awards from other U.S. Armed Forces.''

CATEGORIES OF RECORDS IN THE SYSTEM:

At beginning of paragraph, add ''Navy Awards:''

Add new paragraph 2 that reads: ''Marine Corps Awards: Approved individual awards from 1917 to present; approved unit awards from 1941 to present; Awards Processing System contains digital information regarding awards approved by the Secretary of the Navy, the Commandant of the Marine Corps, and the various delegated awarding authorities throughout the Marine Corps from 2000 to present. Individual records contain a copy of the approved personal award recommendation which contains the member's full name, social security number, award recommended, award approved, unit assigned at the time of action or period of service, originator of the award recommendation, and a copy of the approved award citation/certificate. Tertiary records include paper records and microfilmed records which contain the member's full name, service number or social security number, rank or grade recommended award, approved award, approval date originator of the award, the approval authority, period of the award, chain of command information.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; Secretary of the Navy Instruction 1650.1G, Navy and Marine Corps Awards Manual; and E.O. 9397 (SSN).''

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Insert new paragraph 2 that reads: ''To public and private organizations, including news media, for the purpose of granting access and/or publicizing awards or honors.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Navy Awards: Chief of Naval Operations (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000. Marine Corps Awards: Headquarters U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, Virginia 22134–5103.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Navy personnel seeking to determine whether this system of records contains information about themselves should contact their local Personnel Support Activity or Personnel Support Detachment for a search of their Navy military personnel record or write to the Chief of Naval Operations (DNS–37) 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, time period of award, and must be signed.

Marine Corps personnel seeking to determine whether this system of records contains information about themselves should contact their unit administrative officer (G–1/S–1) for a search of their Service Record Book/Officer Qualification Record or write to Headquarters U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, Virginia 22134–5103.

Request should include full name, Social Security Number, time period of award, and must be signed.

All other individuals seeking access to records about themselves in this system of records should contact either the Chief of Naval Operations, Navy Awards Branch (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000 (for U.S. Navy awards) or Headquarters U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), MCB Quantico, Virginia 22134–5103 (for U.S. Marine Corps awards).

Request should include full name, Social Security Number, time period of award, and must be signed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Navy personnel seeking access to records about themselves contained in this system of records should contact their local Personnel Support Activity or Personnel Support Detachment for a search of their Navy military personnel record or write to the Chief of Naval Operations (DNS–37) 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, time period of award, and must be signed.

Marine Corps personnel seeking access to records about themselves in this system of records should contact their unit administrative officer (G–1/S–1) for a search of their Service Record Book/Officer Qualification Record or write to Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, Virginia 22134–5103.

Request should include full name, Social Security Number, time period of award, and must be signed.

All other individuals seeking access to records about themselves in this system of records should contact either the Chief of Naval Operations, Navy Awards Branch (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000 (for U.S. Navy awards) or Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, Virginia 22134–5103 (for U.S. Marine Corps awards).

Request should include full name, Social Security Number, time period of award, and must be signed.''

* * * * *

RECORD SOURCE CATEGORIES:

Add new paragraph 2: ''Marine Corps Awards histories, the award letter 1650, Marine Corps Awards Processing System, Personal Award Recommendation (OPNAV 1650/3), Marine Corps orders, official military records, command histories, historical paper copies of personal award citations, and microfilm copies of Navy and Marine Corps 3x5 award cards.''

* * * * *

NM01650–1

SYSTEM NAME:

Department of the Navy (DON) Military Awards System.

SYSTEM LOCATION:

Chief of Naval Operations (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000; Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, VA 22134–5103; and organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy Awards: All recipients of Navy and Marine Corps personal awards, to include the U.S. Coast Guard, Navy, and Marine Corps military personnel who receive personal awards from other U.S. Armed Forces.

Marine Corps Awards: Approved individual awards from 1917 to present; approved unit awards from 1941 to present; Awards Processing System contains digital information regarding awards approved by the Secretary of the Navy, the Commandant of the Marine Corps, and the various delegated awarding authorities throughout the Marine Corps from 2000 to present. Individual records contain a copy of the approved personal award recommendation which contains the member's full name, social security number, award recommended, award approved, unit assigned at the time of action or period of service, originator of the award recommendation, and a copy of the approved award citation/certificate. Tertiary records include paper records and microfilmed records which contain the member's full name, service number or social security number, rank or grade recommended award, approved award, approval date originator of the award, the approval authority, period of the award, chain of command information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Approved individual personal awards for 1967 and continuing; approved unit awards for 1941 and continuing; Navy Department Awards Web Service—File includes awards approved by the Secretary of the Navy and those authorized for approval by subordinate commanders. Record includes service member's name, service number/Social Security Number, award recommended, and award approved. A second section of the file contains activities awarded Unit Awards and the dates of eligibility; microfilm copies of approved World War II—1967 personal awards; Navy Department Awards Web Service electronic data base that includes data extracted from OPNAV Form 1650/3, Personal Award Recommendation, such as name, Social Security Number, type of award, approval authority, recommended award, approved award, meritorious start and end dates, service status of recipient, originator of the recommendation, designator, Unit Identification Codes, officer or enlisted, service component, rate/rating, pay grade, number of award recommended, assigned billet of individual, campaign designation, classified or unclassified designated award, date of recommendation, award approved date, approved award, chain of command data, extraordinary heroism determination, letter type, board serial number, pertinent facts, date forwarded to Secretary of the Navy, Board's recommendation, participating command field, Board meeting data, receipt date by Board of Decorations and Medals, name of unit, name of ship, command points of contact that includes telephone numbers and email addresses, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; Secretary of the Navy Instruction 1650.1G, Navy and Marine Corps Awards Manual; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records of military personal awards and unit awards and to electronically process award recommendations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

To public and private organizations, including news media, for the purpose of granting access and/or publicizing awards or honors.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Electronic, paper, and microfilm records.

RETRIEVABILITY:

Name, Social Security Number, and individual unit name.

SAFEGUARDS:

Automated database requires authorized access; password protected; some user sites only have read capability; designated user capability regarding add/delete/change functions. Paper and microfiche records are under the control of authorized personnel during working hours and the office space in which records are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Permanent. A duplicate copy of the active file is provided to the National Archives and Records Administration. History files for the years 1967 to 1989 have been transferred to NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Awards: Chief of Naval Operations (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000.

MARINE CORPS AWARDS:

Headquarters U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, Virginia 22134–5103.

NOTIFICATION PROCEDURE:

Navy personnel seeking to determine whether this system of records contains information about themselves should contact their local Personnel Support Activity or Personnel Support Detachment for a search of their Navy military personnel record or write to the Chief of Naval Operations (DNS–37) 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, time period of award, and must be signed.

Marine Corps personnel seeking to determine whether this system of records contains information about themselves should contact their unit administrative officer (G–1/S–1) for a search of their Service Record Book/ Officer Qualification Record or write to Headquarters U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, Virginia 22134–5103.

Request should include full name, Social Security Number, time period of award, and must be signed.

All other individuals seeking access to records about themselves in this system of records should contact either the Chief of Naval Operations, Navy Awards Branch (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000 (for U.S. Navy awards) or Headquarters U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), MCB Quantico, Virginia 22134–5103 (for U.S. Marine Corps awards).

Request should include full name, Social Security Number, time period of award, and must be signed.

RECORD ACCESS PROCEDURES:

Navy personnel seeking access to records about themselves contained in this system of records should contact their local Personnel Support Activity or Personnel Support Detachment for a search of their Navy military personnel record or write to the Chief of Naval Operations (DNS–37) 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, time period of award, and must be signed.

Marine Corps personnel seeking access to records about themselves in this system of records should contact their unit administrative officer (G–1/S–1) for a search of their Service Record Book/Officer Qualification Record or write to Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, Virginia 22134–5103.

Request should include full name, Social Security Number, time period of award, and must be signed.

All other individuals seeking access to records about themselves in this system of records should contact either the Chief of Naval Operations, Navy Awards Branch (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000 (for U.S. Navy awards) or Headquarters, U.S. Marine Corps, Manpower and Reserve Affairs Department, Personnel Management Division, Military Awards Branch (MMMA), 3280 Russell Road, MCB Quantico, Virginia 22134–5103 (for U.S. Marine Corps awards).

Request should include full name, Social Security Number, time period of award, and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy Department Awards Web Service; OPNAV Form 1650/3, Personal Award Recommendation Form; general orders; military personnel file; medical file; deck logs; command histories; and award letter 1650.

Marine Corps Awards histories, the award letter 1650, Marine Corps Awards Processing System, Personal Award Recommendation (OPNAV 1650/3), Marine Corps orders, official military records, command histories, historical paper copies of personal award citations, and microfilm copies of Navy and Marine Corps 3x5 award cards

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23072 Filed 11–21–05; 8:45 am]

BILLING CODE 5001–06–M

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 23, 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 16, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Evaluation of Math Curricula.

Frequency: Semi-Annually.

Affected Public: Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 10,200.

Burden Hours: 5,000.

Abstract: The Evaluation of Math Curricula will assess the effectiveness of up to five early elementary math curricula. This submission includes recruitment of districts and schools only; forms will be developed and submitted in a second request.

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 2932. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–23092 Filed 11–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register.**

DATES: Tuesday, December 13, 2005, 9 a.m. to 12 noon.

ADDRESSES: Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kane, Phone: (202) 586–4753, or Ms. Estelle W. Hebron, Phone: (202) 586–6837, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues:

Tentative Agenda:

- Call to Order by Mr. Thomas G. Kraemer, Chairman.
- Remarks by Mr. Clay Sell, Deputy Secretary of Energy.
- Presentation of Guest Speaker re: The New Energy Act—The Honorable Larry Craig, Senate Committee on Energy and Natural Resources (invited).
- Council Business.

Communications Committee report—Mr. David Surber, Chair.

Finance Committee Report—Mr. Rich Eimer, Chairman.

Discussion re new Education Committee—Barbara Altizer/Bob Beck.

Status Report on New Study—Fred Palmer.

- Presentation of Guest Speaker re: Integrated Gasification Combined Cycle: Decision Making, Planning & Execution—Mr. Michael J. Mudd, AEP.
- Presentation of Guest Speaker re: Hydrogen and the Transportation Infrastructure—Dr. Joan Ogden, University of California/Davis.
- Presentation of Guest Speaker re: Bioremediation of Coal Mining Water Discharges—Ms. Terry Ruth, lambda Bioremediation Systems, Inc.
- Presentation of Guest Speaker re: Mercury Emissions Control and Electricity Generation Plants—Dr. Carl Hensman, Frontier Geosciences, Inc.
- Presentation of Guest Speaker re: SO2 Allowances-Pricing and Availability—(TBA).
- Other Business.
- Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate orderly business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Robert Kane or Ms. Estelle Hebron at the address and telephone numbers listed above. You must make your request for an oral statement at lease five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 15, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–23116 Filed 11–21–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Impact Statement: Site Selection for the Expansion of the Strategic Petroleum Reserve

AGENCY: Department of Energy (DOE).

ACTION: Notice to reopen the public scoping period and hold a public scoping meeting.

SUMMARY: On September 1, 2005, DOE announced its intention to prepare an environmental impact statement (EIS) for site selection and expansion of the Strategic Petroleum Reserve as required by the Energy Policy Act of 2005 (70 FR 52088). DOE at that time planned to assess the impacts of capacity expansion at three of the four existing storage sites and the development of a new storage site in the Gulf Coast region. Three scoping meetings were held and the scoping period, which was extended in

response to conditions following Hurricane Katrina, closed on October 28, 2005 (70 FR 56649; September 28, 2005). On October 27, 2005, the Governor of Mississippi requested the Secretary of Energy to include a new site at Bruinsburg Salt Dome in the analysis of potential sites and environmental impacts for the proposal to expand the storage capacity of the Strategic Petroleum Reserve. In light of this request, DOE has reopened the public scoping period and scheduled another scoping meeting.

DATES: With the publication of this notice, the public scoping period is reopened and will extend through December 19, 2005. DOE invites interested agencies, organizations, Native American tribes, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by December 19, 2005, in defining the scope of the draft EIS. Comments postmarked after this date will be considered to the degree practicable.

The scoping meeting will be held on December 7, 2005. The location of the public scoping meeting was selected based on its proximity to the proposed new oil storage site at Bruinsburg and the availability of public meeting facilities.

ADDRESSES: The scoping meeting will be held in Port Gibson, Mississippi, on December 7, 2005, 7 p.m. to 9 p.m., at the Claiborne County Multi-Purpose Building, 1703 Bridewell Lane, Port Gibson, Mississippi. Telephone: 601–437–5419.

FOR FURTHER INFORMATION, CONTACT: Comments or suggestions on the scope and content of the EIS and requests to speak at the scoping meeting should be directed to Donald Silawsky, Office of Petroleum Reserves (FE–47), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0301; telephone: 202–586–1892; fax: 202–586–4446; or electronic mail at *Donald.Silawsky@hq.doe.gov.* Envelopes and the subject line of e-mails or faxes should be labeled ''Scoping for the SPR EIS.'' Please note that conventional mail to DOE may be delayed by anthrax screening. For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Donald Silawsky by any of the means listed above. Additional information may also be found on the DOE Fossil Energy Strategic Petroleum Reserve proposed expansion Web site at *http://fossil.energy.gov/news/techlines/2005/tl_spr_noi.html.*

For information on the DOE NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone: 202–586–4600 or leave a toll-free message at: 800–472–2756; fax: 202–586–7031; or electronic mail at *askNEPA@eh.doe.gov.*

Issued in Washington, DC, on November 16, 2005.

Mark Matarrese,

NEPA Compliance Officer, Office of Fossil Energy.

[FR Doc. 05–23117 Filed 11–21–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–10–000]

California Independent System Operator Corporation; Notice of Filing

November 10, 2005.

Take notice that on October 26, 2005, California Independent System Operator Corporation (ISO) tendered for filing a corrected Petition for Review of Arbitration Award originally submitted on October 24, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6420 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–77–001]

Dominion South Pipeline Company, LP; Notice of Compliance Filing

November 15, 2005.

Take notice that on November 4, 2005, Dominion South Pipeline Company, LP (Dominion South) submitted a compliance filing pursuant to the Commission's ''Order Issuing Certificate'' issued October 20, 2005 in Docket Nos. CP05–76–000, CP05–76–000 and CP05–78–000, which authorized the construction and operation of approximately five feet of 12-inch pipe in Matagorda County, Texas.

Dominion South states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6439 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES06–5–000]

Kansas City Power and Light Company; Notice of Filing

November 10, 2005.

Take notice that on November 1, 2005, Kansas City Power and Light Company (KCPL) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt securities in an amount not to exceed $300 million.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. 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.

Comment Date: 5 p.m. eastern time on November 30, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6422 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–90–000]

KeySpan LNG, LP; Notice of Compliance Filing

November 15, 2005.

Take notice that on November 10, 2005, KeySpan LNG, LP (KeySpan LNG) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 2005:

First Revised Sheet No. 70
First Revised Sheet No. 74
Original Sheet No. 74A
Second Revised Sheet No. 93
First Revised Sheet No. 93A

KeySpan LNG states that copies of the filing are being mailed to KeySpan LNG's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6438 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–1–000]

Leaning Juniper Wind Power, LLC; Notice of Issuance of Order

November 10, 2005.

Leaning Juniper Wind Power, LLC (Leaning Juniper) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for the sales of energy, capacity and ancillary services at market-based rates. Leaning Juniper also requested waiver of various Commission regulations. In particular, Leaning Juniper requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Leaning Juniper.

On November 4, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part

34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Leaning Juniper should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is December 5, 2005.

Absent a request to be heard in opposition by the deadline above, Leaning Juniper is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Leaning Juniper, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Leaning Juniper's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6421 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–87–000]

Midwestern Gas Transmission Company; Notice of Annual Cashout Report

November 15, 2005.

Take notice that on November 10, 2005, Midwestern Gas Transmission Company (Midwestern) tendered for filing its annual cashout report for the September 2004 through August 2005 period.

Midwestern states that the cashout report reflects a net cashout gain of $1,617,676. Midwestern states that it will credit this gain to its firm shippers in its next issuance of invoices.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time November 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6435 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES06–6–000]

NorthWestern Corporation; Notice of Filing

November 10, 2005.

Take notice that on November 3, 2005, NorthWestern Corporation (NorthWestern) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to: (1) Borrow proceeds from the sale by the city of Forsyth, Montana (City) of not to exceed $170,205,000 principal amount of City's Pollution Control Revenue Refunding Bonds Series 2005 (the Series 2005 PCRRBs); (2) provide for repayment thereof; and (3) issue and deliver to the Trustee for the Series 2005 PCRRBs a like principal amount of a new series of its First Mortgage Bonds to secure payment of the Series 2005 PCRRBs.

NorthWestern also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. 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.

Comment Date: 5 p.m. Eastern Time on November 18, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6423 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–163–003]

Paiute Pipeline Company; Notice of Compliance Filing

November 15, 2005.

Take notice that on November 9, 2005, Paiute Pipeline Company (Paiute) tendered for filing to be a part of its FERC Gas Tariff Second Revised Volume No. 1–A Sixteenth Revised Sheet No. 10 and Twelfth Revised Sheet No. 161, to become effective December 1, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6431 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–523–010]

Southern Natural Gas Company; Notice of Refund Report

November 15, 2005.

Take notice that on November 9, 2005, Southern Natural Gas Company (Southern) tendered for filing a refund report showing refunds that were made to Southern's customers pursuant to Article VI of the Stipulation and Agreement dated April 29, 2005, filed in Docket Nos. RP04–523–000 and RP04–523–001 (Stipulation and Agreement) and approved by the Commission in a Letter Order on July 13, 2005. Southern states that the order became final on August 12, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6430 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–88–000]

Southern Natural Gas Company; Notice of Request for Waiver

November 15, 2005.

Take notice that on November 10, 2005, Southern Natural Gas Company (Southern) tendered for filing request for waiver with the Commission for authorization to waive the requirements of section 6.3 of the general terms and conditions of its tariff to allow shippers with firm rights at receipt points that are out of service as a result of the damage caused by Hurricanes Rita and Katrina to request a temporary shift to a receipt point on a firm basis where capacity is available up to their maximum daily receipt quantity. Southern states that such receipt point shifts will be for a temporary period of the earlier of: (i) The first of the month after the date the existing firm receipt point is operational and Southern is able to gas accept nominations; or (ii) through June 30, 2006. Southern further states that the rights to the existing firm receipt points will automatically revert back at the end of the temporary period.

Southern states that it will hold an open season specifically for such temporary receipt point shifts and will award the receipt point shifts according to section 2.1(b) of the general terms and conditions of its tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time November 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6436 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–86–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of Cash-Out Report

November 15, 2005.

Take notice that on November 8, 2005, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, its report of net cash-out activity.

Southern Star states that copies of the filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6434 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–18–000]

Tennessee Gas Pipeline Company; Notice of Application

November 10, 2005.

Take notice that on October 31, 2005, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP06–18–000, an application pursuant to section 7 of the Natural Gas Act and Part 157 of the regulations of the Federal Energy Regulatory Commission, for an order authorizing Tennessee to construct and operate approximately 7.8 miles of 24-inch pipeline in Essex and Middlesex Counties, Massachusetts. The proposed facilities will provide an additional 82,300 Dekatherms per day of incremental firm transportation capacity to Tennessee's New England Area market. Tennessee also requested that an order be issued by August 1, 2006, all as more fully set forth in the application which is on file with the Commission and 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, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to, Jay V. Allen, Senior Counsel, 1001 Louisiana, Houston, Texas 77002, telephone: (713) 420–5589.

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, before the comment date of this notice, 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: December 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6419 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–89–000]

Trailblazer Pipeline Company; Notice of Refund Report

November 15, 2005.

Take notice that on November 10, 2005, Trailblazer Pipeline Company (Trailblazer) tendered for filing its Refund Report regarding the penalty revenue for the period July 1, 2005 through September 30, 2005, that it refunded to its customers pursuant to section 40.10 of the general terms and conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time November 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6437 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–16–000]

Transcontinental Gas Pipe Line; Notice of Application

November 10, 2005.

Take notice that on October 31, 2005, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed, in CP06–16–000, an application pursuant to section 7 of the Natural Gas Act (NGA), for a certificate of public convenience and necessity authorizing Transco to remove and abandon two combined-cycle gas turbines totaling 13,040 horsepower as well as construct and operate a new 10,310 horsepower simple-cycle gas-fired compressor and additional facilities at its Compressor Station No. 50 in Evangeline Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and 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, call (866) 208–3676 or TTY (202) 502–8659.

Any questions regarding this application may be directed to Bill Hammons, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, (713) 215–2130.

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, before the comment date of this notice, 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: December 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6426 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–029]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 15, 2005.

Take notice that, on November 7, 2005, Transcontinental Gas Pipe Line Corporation (Transco) submitted a compliance filing pursuant to the Commission's Order on Negotiated Rate Agreements, issued on October 26, 2005 in Docket No. RP96–359–028.

Transco states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6427 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–85–000]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Great Plains Surcharge Refund

November 15, 2005.

Take notice that on November 4, 2005, Transcontinental Gas Pipe Line Corporation (Transco) filed its report of Great Plains Surcharge refunds for the period November 1, 2003 through March 31, 2004. Transco states that its filing complies with the Great Plains Refund Provisions in section 39 of the general terms and conditions (GT&C) of Transco's FERC Gas Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6433 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 15, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–2263–005.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits a notice of change in status report pursuant to FERC's Order 652 issued on February 10, 2005.
Filed Date: November 2, 2005.
Accession Number: 20051108–0290.
Comment Date: 5 p.m. eastern time on Wednesday, November 23, 2005.

Docket Numbers: ER04–1137–000; ER06–19–001.
Applicants: MeadWestvaco Energy Services, LLC.
Description: MeadWestavco Energy Services, LLC notifies FERC of a change in name to NewPage Energy Services, LLC, effective September 30, 2005.
Filed Date: November 4, 2005.
Accession Number: 20051108–0208.
Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER05–1394–002.
Applicants: KGen Hot Spring LLC.
Description: KGen Hot Spring LLC submits, under protest, a Conditional Notice of Cancellation of FERC Rate Schedule No.1 in accordance with the October 20, 2005 Order.
Filed Date: November 4, 2005.
Accession Number: 20051109–0242.
Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–4–001.
Applicants: Michigan Electric Transmission Co., LLC.
Description: Michigan Electric Transmission Co, LLC submits revision to Interconnection Facilities Agreement with Wolverine Power Supply Cooperative.
Filed Date: November 4, 2005.
Accession Number: 20051109–0240.
Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–78–001.
Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits substitute pages correcting the errors & omissions to Sixth Revised Sheet No. 24 to FERC Electric Tariff, Sixth Revised Volume No.1.

Filed Date: November 3, 2005.

Accession Number: 20051108–0257.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–156–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc agent for Alabama Power Co submits cancellation of the Firm Power Purchase Contract with Alabama Municipal Electric Authority pursuant to section 35.15 of FERC's Regulations, Order 614.

Filed Date: November 3, 2005.

Accession Number: 20051108–0264.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–157–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits Fifth Revised Sheet No. 4 et al to FERC Electric Tariff, Original Volume No. 1 in compliance with FERC's October 7, 2005 Order.

Filed Date: November 4, 2005.

Accession Number: 20051108–0263.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–159–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc et al proposed revisions to Attachment O of the Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: November 4, 2005.

Accession Number: 20051108–0204.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–160–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits the large Generator Interconnection Agreement with High Prairie Wind Farm II, LLC and Interstate Power and Light Company.

Filed Date: November 4, 2005.

Accession Number: 20051108–0205.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–161–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits revisions to Schedule 2 of the PJM Open Access Transmission Tariff to reflect new or revised revenue requirements for Reliant Energy Aurora LP *et al.*

Filed Date: November 4, 2005.

Accession Number: 20051108–0206.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–163–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits a Letter Agreement with the City of Corona.

Filed Date: November 4, 2005.

Accession Number: 20051109–0172.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–167–001.

Applicants: Liberty Power Maryland LLC.

Description: Liberty Power Maryland, LLC submits amendment 1 to their petition for acceptance of FERC Electric Rate Schedule No. 1 Waivers and Blanket Authority and request for shortened notice period.

Filed Date: November 9, 2005.

Accession Number: 20051114–0003.

Comment Date: 5 p.m. eastern time on Tuesday, November 22, 2005.

Docket Numbers: ER06–170–000.

Applicants: Michigan Electric Transmission Co., LLC.

Description: Michigan Electric Transmission Co submits a revised version of the Interconnection Facilities Agreement with the City of Hart.

Filed Date: November 4, 2005.

Accession Number: 20051109–0173.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Docket Numbers: ER06–171–000.

Applicants: Massachusetts Electric Company.

Description: Massachusetts Electric Co dba National Grid submits First Revised Sheet No.1 FERC Electric Tariff, First Revised Volume No. 1.

Filed Date: November 4, 2005.

Accession Number: 20051114–0100.

Comment Date: 5 p.m. eastern time on Friday, November 25, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E5–6417 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2105–089 California]

Pacific Gas and Electric Company; Notice of Availability of the Final Environmental Impacts Statement for the Upper North Fork Feather River Project

November 10, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Upper North Fork

Feather River Project (FERC No. 2105), located on the North Fork Feather River and Butt Creek, in Plumas County, California and has prepared a Final Environmental Impact Statement (final EIS) for the project.

The final EIS contains staff evaluations of the applicant's proposal and the alternatives for relicensing the Upper North Fork Feather River Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

The final EIS also contains an analysis of Section 18 fishway prescriptions and section 10(j) recommendations that were filed by NOAA Fisheries on March 14, 2005, after issuance of the draft EIS. In addition, the final EIS contains an analysis of potential measures for providing colder water to the Upper North Fork Feather River during the summer. Because these analyses first appear in the final EIS, you are specifically invited to file comments on these three items in this document. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers should be supported by appropriate documentation. Your comments will be considered in the Commission's order in this proceeding.

Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by December 19, 2005, and should reference Project No. 2105–089. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Before the Commission makes a licensing decision, it will take into account all concerns relevant to the public interest. The final EIS will be part of the record from which the Commission will make its decision.

Copies of the final EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS also may be viewed on the Internet at *http://www.ferc.gov* under the eLibrary link. Please call (202) 502–8822 for assistance.

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.

For further information, contact John Mudre at (202) 502–8902 or at *john.mudre@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–6425 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 15, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project Number:* P–1267–073.

c. *Date Filed:* August 22, 2005.

d. *Applicant:* Greenwood County, South Carolina.

e. *Name of Project:* Buzzard's Roost Hydroelectric Project.

f. *Location:* The project is located on the Saluda River in Greenwood, Laurens, and Newberry Counties, South Carolina. The project does not occupy any federal or tribal lands. The proposed non-project use would be located on Lake Greenwood in Greenwood County at Stoney Point subdivision.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contacts:* Larry Smith, 600 Monument Street, P.O. Box P–103, Suite 102, Greenwood, SC 29646; phone: (864) 942–8556.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674, or by e-mail: *shana.high@ferc.gov.*

j. *Deadline for filing comments and/or motions:* December 16, 2005.

k. *Description of the Application:* Greenwood County requests Commission approval to grant an encroachment permit and use agreement to Stoney Point Property Owners Association (SPPOA) for the expansion of an existing community marina. The marina currently consists of one dock with 18 boat slips, a boat launch ramp with an adjacent courtesy dock, and two jet-ski ramps. The proposed marina expansion includes additional dock works to accommodate 68 new boat slips, and four additional jet-ski ramps. The overall boat-dock footprint would extend up to 250 feet into the normal lake pool over a width of 275 feet. The marina's six personal-watercraft ramps would occupy a 60-foot-long by 30-foot-wide area of the shoreline. The expanded marina facilities would be leased to SPPOA members.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–1267–073). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6428 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–691–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Technical Conference

November 15, 2005.

Take notice that the Commission will convene a technical conference on Tuesday, December 6, 2005, at 10 am (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The technical conference will address all issues raised by CenterPoint Energy—Mississippi River Transmission Corporation's September 30, 2005 filing to adjust its Fuel Use and Lost and Unaccounted-for Gas (LUFG) Percentages and implement supplemental adjustments to its Fuel Use and LUFG Percentages to reconcile past under-collections of fuel gas under its transportation rate schedules and past over-collections of fuel gas under its storage rate schedules. The Commission directed its staff to convene this technical conference in an October 31, 2005 order establishing technical conference.[1]

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6432 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

[1] CenterPoint Energy—Mississippi River Transmission Corporation, 113 FERC ¶ 61,107 (2005).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at Midwest Iso Winter Gas Supply Availability and Unit Commitment Meeting

November 10, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend a meeting entitled Winter Gas Supply Availability and Unit Commitment, sponsored by the Midwest Independent Transmission System Operator, Inc. The meeting will take place on Wednesday, November 16, 2005, from 4 p.m. to 6 p.m. e.s.t., at the Lakeside Conference Center, 630 West Carmel Drive, Carmel, IN 46032. Teleconference details are expected to become available at *http://www.midwestmarket.org/page/MisoPortalHome.*

The meeting discussions may address matters at issue in the following proceedings:

Docket Nos. ER04–691 and EL04–104, *et al., Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER06–80, *New York State Electric & Gas Corporation.*

This meeting is open to the public.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–6424 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–30–000]

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards; Supplemental Notice of Technical Conference

November 15, 2005.

As announced in a Notice of Technical Conference issued on November 3, 2005, in the above referenced proceeding, two technical conferences will be held in the offices of the Commission, 888 First Street, NE., Washington, DC. All interested persons may attend, and registration is not required. These will be staff conferences, but Commissioners may attend.

The first technical conference is on November 18, 2005, from 9:30 a.m. until approximately 3 p.m. Eastern Time. This conference will be held in the Commission Meeting Room on the second floor of the Commission's office building. Attached is the agenda for this conference.

A second technical conference is tentatively scheduled for Friday, December 9, 2005. The agenda for that conference will be provided at a later time.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after the Commission receives the transcript.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to

202–208–2106 with the required accommodations.

For more information about the conference, please contact Yvonne Bartoli at (202) 502–6054 (*yvonne.bartoli@ferc.gov*) or Sarah McKinley at (202) 502–8004 (*sarah.mckinley@ferc.gov*).

Magalie R. Salas,

Secretary.

Appendix A

Current and Possible Future Procedures for Establishment and Approval of Electric Reliability Standards

Technical Conference Agenda, November 18, 2005, 9:30 a.m.–3 p.m.

9:30 a.m.—Opening Remarks
Joseph T. Kelliher, FERC Chairman

9:45 a.m.—Introductions
Joseph McClelland, Director, Division of Reliability, Office of Markets, Tariffs, and Rates, FERC

9:50 a.m.—Panel I: Standard Setting: The Current NERC and Regional Council Roles and Future ERO and Regional Entity Roles—Views from NERC, Utilities, a Regional Council, and Canada

Representatives of NERC, utilities, a regional council, and Canada will provide their views on:

- How you respond currently to NERC and Regional Council actions and how you plan to respond to the ERO's actions as it establishes, implements, and enforces reliability standards.
- The challenges you might face regarding any new process.

Panelists:
Rick Sergel, President-CEO, North American Electric Reliability Council
Michael G. Morris, Chairman-President-CEO, American Electric Power, Inc.
David Mohre, Executive Director, Energy and Power Division, National Rural Electric Cooperative Association
Allen Mosher, Director of Policy Analysis, American Public Power Association
Sam R. Jones, Vice President-Chief Operating Officer, Electric Reliability Council of Texas, Inc.
Terry Boston, Executive Vice President, Power System Operations, Tennessee Valley Authority
Kim Warren, Manager, Regulatory Affairs, Ontario IMO

11:15 a.m.—Break

11:30 a.m.—Panel II: Standard Setting: The Views of Regional Councils on the Role of Regional Entities Under the Energy Policy Act of 2005

Under the EPAct of 2005, Regional Entities may propose regional standards or variances to the ERO, which after its review can then propose regional standards to the Commission for its approval. In addition, the ERO may delegate its enforcement authority to Regional Entities.

Representatives from regional reliability councils will give their perspectives on the following:

- What preparations are you making regarding the implementation of EPAct 2005?
- Are there any unique circumstances in the region that may impact the implementation of ERO standards? If so, what are they?
- What are your views on regional standards/variances?
- What are your views on regional compliance/enforcement?
- What are your views on the terms that are necessary to incorporate into the delegation agreements with the ERO?
- What challenges can you identify regarding delegation agreements with the ERO?

Panelists:
Paul Johnson, Director, Transmission System Engineering and Maintenance Management, American Electric Power (Representing Reliability First)
Edward Schwerdt, Executive Director, Northeast Power Coordinating Council
William F. Reinke, President-CEO, Southeastern Electric Reliability Council, Inc.
Ken Wiley, President-CEO, Florida Reliability Coordinating Council, Inc.
Charles Yeung, Executive Director, Interregional Affairs, Southwest Power Pool, Inc.
Daniel Skaar, President, Midwest Reliability Organization

12:45 p.m.—1:30 p.m. LUNCH

1:30 p.m.—Panel III: Review of Industry Standards

Standards are developed by many industries throughout the United States to provide a common approach to promote best practices throughout that industry. This panel will elicit views from several different industry representatives and a regional council on their standards development process within the electric industry and what process the ERO might follow.

Panelists will provide their views on the following questions:

- What are the processes you use to develop standards?
- What do you believe are your successes? What are your challenges?
- How do you improve upon standards that are found to be deficient?
- What are the lessons learned from your process that would be useful for the Commission to utilize to assure high reliability in the electric power system?

Panelists:
Rick Sergel, President-CEO, North American Electric Reliability Council
Richard Wakefield, Past Chairman, Energy Policy Committee, Institute of Electrical and Electronics Engineers-USA
Richard Barrett, Office of Research, Nuclear Regulatory Commission
Bruce Ellsworth, Chair, New York State Reliability Council
Louise McCarren, CEO, Western Electricity Coordinating Council

2:45 p.m.—Concluding Remarks

[FR Doc. E5–6429 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications Public Notice

November 14, 2005.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number,

excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date received	Presenter or requester
Prohibited:		
1. Project No. 382–000	11–7–05	Amy L. Fesnock.
2. Project Nos. 2539–000 and 12522–000	10–31–05	Jude Pinelski [1].
Exempt:		
1. CP05–92–000	11–3–05	Hon. Ron LeLeux.
2. Project No. 2216–000	11–2–05	Hon. Brian Higgins.
3. Project Nos. 2602–000 and 2692–000	10–28–05	Hon. Charles H. Taylor.
4. Project No. 10395–000	11–2–05	Hon. Geoff Davis.

[1] One of nineteen postcard ''form'' submittals in Docket Nos. P–2539–000 and P–12522–000 filed between 10/31/05 and 11/7/05.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6418 Filed 11–21–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[IN 165–1; FRL–7999–6]

Adequacy Status of Vigo County, IN, 8-Hour Ozone Redesignation and Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets in the Vigo County, Indiana 8-hour ozone redesignation request and maintenance plan are adequate for conformity purposes. On March 2, 1999, the DC Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Vigo County can use the motor vehicle emissions budgets from the submitted 8-hour ozone redesignation request and maintenance plan for future conformity determinations. These budgets are effective December 7, 2005. The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

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

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Indiana Department of Environmental Management on October 25, 2005, stating that the motor vehicle emissions budgets for the year 2015, submitted in the Vigo County, Indiana 8-hour ozone redesignation request and maintenance plan, are adequate. This finding has been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Dated: November 10, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–23091 Filed 11–21–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 6, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Paul J. Hanisch, Crosby, North Dakota; to acquire voting shares of Hanisch Bankshares, Ltd., Crosby, North Dakota and thereby indirectly acquire

control of Farmers State Bank of Crosby, Crosby, North Dakota.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Kirk Berneking, Solomon, Kansas, as trustee of the Julia Riordan Trust No. 2; to retain voting shares of Solomon Bancshares, Inc., Solomon, Kansas, and thereby indirectly retain voting shares of Solomon State Bank, Solomon, Kansas.

Board of Governors of the Federal Reserve System, November 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6404 Filed 11–21 –05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

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 December 16, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Compass Bancshares, Inc, Birmingham, Alabama; to acquire 100 percent of the voting shares of TexasBanc Holding Co., Weatherford, Texas, and thereby indirectly acquire M&F Financial Corp., Wilmington, Delaware, and TexasBank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, November 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6403 Filed 11–21–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

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The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

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 December 16, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. TraCorp, Inc., Tullahoma, Tennessee; to merge with FN Bancorp, Inc., Tullahoma, Tennessee, and thereby indirectly acquire voting shares of First National Bank of Tullahoma, Tullahoma, Tennessee.

Board of Governors of the Federal Reserve System, November 17, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6416 Filed 11–21–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—09/12/2005			
20051463	Castle Harlan Partners IV, L.P	Donald N. Smith	The Restaurant Holding Corporation.

Trans No.	Acquiring	Acquired	Entities
20051504	Grupo Ferrovial, S.A	SWT Lux S.A	SWT Lux S.A
20051514	Polar North America Income Fund	Code, Hennessy & Simmons IV, L.P	WNA Holding Company.
20051516	SCP Pool Corporation	David E. and Linda L. Lange	Automatic Rain Company.
20051520	Li & Fung Limited	Bradley D. Egna	Briefly Stated Holdings, Inc.
20051526	WESCO International, Inc	CGW Southeast Partners IV, L.P	Carlton-Bates Company.
20051527	Health Care Service Corporation	Group Health Service of Oklahoma, Inc..	GHS Holding Company, Inc., Group Health Service of Oklahoma, Inc.
20051535	Popular, Inc	E-LOAN, Inc	E-LOAN, Inc.
20051537	Vector Capital III, L.P	Register.com, Inc	Register.com, Inc.
20051539	BEA Systems, Inc	Plumtree Software, Inc	Plumtree Software, Inc.
20051543	LIN TV Corp	Jeffrey H. Smulyan	Emmis Communications Corporation, Emmis Indiana Broadcasting, L.P., Emmis Television Broadcasting, L.P., Emmis Television License, LLC.
20051545	Journal Communications, Inc	Jeffrey H. Smulyan	Emmis Television Broadcasting, L.P., Emmis Television License, LLC.
20051547	Gray Television, Inc	Jeffrey H. Smulyan	Emmis Television Broadcasting, L.P., Emmis Television License, LLC.
20051558	Macquire Bank Limited	Gregory L. Craig	Cook Inlet Energy Supply LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—09/14/2005			
20051461	Warburg Pincus Private Equity VIII, L.P.	Dynegy Inc	Dynegy Midstream Services, Limited Partnership.
20051529	Eastern Insurance Holdings, Inc	Eastern Holding Company, Ltd	Eastern Holding Company, Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—09/15/2005			
20051500	Rexam PLC	Stonebridge Partners Equity Fund III, L.P.	Delta Plastics Holdings, Inc.
20051533	Ashtead Group plc	Howard and Sue Groff	Northride Equipment Company.
20051552	Alliance Data Systems Corp	Bigfoot Interactive, Inc	Bigfoot Interactive, Inc.
20051559	OSI Pharmaceuticals, Inc	Eyetech Pharmaceuticals, Inc	Eyetech Pharmaceuticals, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/16/2005			
20051464	Southern Minnesota Beet Sugar Co-operative.	Imperial Sugar Company	Holly Sugar Company.
20051493	Sonic Healthcare Limited	Clinical Pathology Laboratories, Inc	Clinical Pathology Laboratories, Inc
20051566	Sprint Nextel Corporation	EATELCORP, Inc	Gulf Coast Wireless Limited Partnership.
20051567	Aleris International, Inc	Sun Capital Partners II, LP	ALSCO Holdings, Inc.
20051584	Green Equity Investors IV, L.P	Craig Nickoloff	Claim Jumper Restaurants, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—09/19/2005			
20051546	TCV V, L.P	INFONXX, Inc	INFONXX, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/20/2005			
20051503	Welsh, Carson, Anderson & Stowe X, L.P.	Almedica International Inc	Almedical International Inc.
20051523	Dover Corporation	Doughty Hanson & Limited	Knowles Electronics Holdings, Inc.
20051586	Sprint Nextel Corporation	IWO Holdings, Inc	IWO Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/21/2005			
20051544	Vallourec SA	Virginia L. Shaw	ShawCor Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/22/2005			
20051563	Hiroshi Mikitani	LinkShare Corporation	LinkShare Corporation.
20051582	Colam Entreprendre S.A	Stuart C. Irby Company	Stuart C. Irby Company.
TRANSACTIONS GRANTED EARLY TERMINATION—09/23/2005			
20051496	Welsh Carson, Anderson & Stowe VII, L.P.	William A. Fickling, Jr	Beech Street Corporation.
20051506	Credit Suisse Group	Dexia S.A	SPS Holding Corp.
20051551	Warburg Pincus Private Equity IX, L.P.	KRG Capital Fund II, L.P	Chronic Care Solutions, Inc.
20051553	Warburg Pincus Private Equity IX, L.P.	Charterhouse Equity Partners III, L.P	MPTC Holdings, Inc.
20051576	Willis Stein & Partners III, L.P	Lincolnshire Equity Fund II, L.P	Nexcycle SMI Holding Corp.
20051585	Hiland Partners, L.P	Hiland Partners, LLC	Hiland Partners, LLC.

Trans No.	Acquiring	Acquired	Entities
20051591	Cleveland Brothers Equipment Co., Inc.	James C. Beckwith III	Beckwith Machinery Company.
20051596	Cleveland Brothers Equipment Co., Inc.	G. Nicholas Beckwith III	Beckwith Machinery Company.
20051598	News Corporation	IGN Entertainment, Inc	IGN Entertainment, Inc.
20051604	Warburg Pincus Private Equity IX, L.P.	Secure Computing Corporation	Secure Computing Corporation.
20051607	Siemens Aktiengesellschaft	First Reservice Fund IX, L.P	Wheelabrator Air Pollution Control, Inc.
20051609	Nautic Partners V, L.P	Carter D. Pope	Imaging Technologies Services, Inc.
20051620	EXCO Holdings II, Inc	EXCO Acquisition, LLC	EXCO Holdings Inc.
20051624	Warburg Pincus Private Equity IX, L.P.	Warburg Pincus Private Equity VIII, L.P.	Topco Associates Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/26/2005			
20051532	LifePoint Hospitals, Inc	HCA Inc	Charleston Hospital, Inc., Clinch Valley Endocrinology, LLC, Clinch Valley Valley Pulmonology, LLC, Clinch Valley Urology, LLC, Columbia-S.J. Ventures Properties, Limited Partnership, Columbia-St. Joseph's Healthcare System, Limited Partnership, CVMC Property, LLC, Galen-Med, Inc., Orthopedics of Southwest Virginia, LLC, Raleigh General Hospital, Teays Valley Health Services, Inc., West Virginia Management Services Organization, Inc.
20051540	Layne Christensen Company	Reynolds, Inc	Reynolds, Inc.
20051593	Sun Capital Partners IV, L.P	Sterling Group Partners I, L.P	Exopack Holding Corp.
20051611	Argos Acquisition Pte. Ltd	Agilent Technologies, Inc	Agilent Technologies, Inc.
20051619	Cendant Corporation	Wind Hotels Holdings Inc	GH-Galveston, Inc., Grand Bay Management Company, Performance Hospitality Management Company, WHC Franchise Corporation, W. Isla, LLC, Wyndham 58th Street, L.L.C., Wyndham (Bermuda) Management Company, Ltd., Wyndham Hotels & Resorts (Aruba) N.V., Wyndham International Inc., Wyndham International Operating Partnership, L.P., Wyndham IP Corporation, Wyndham Management Corporation.
20051629	Omnicom Group Inc	Ford Motor Company	The Beanstalk Group, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—09/27/2005			
20051557	Triad Hospitals, Inc	Baptist Health System, Inc	Baptist Montclair Medical Center.
20051571	Illinois Tool Works Inc	Kirtland Capital Partners III L.P	Instron Corporation.
20051572	American Electric Power Company, Inc.	Reliant Energy, Inc	Twelvepole Creek, LLC.
20051573	J. Kent McNew	BP p.l.c	BP Products North American Inc.
20051590	Financiere F.L	UNOVA, Inc	UNOVA, Inc.
20051594	Superior Plus Income Fund	Wellspring Capital Partners III, L.P	JW Aluminum Company.
20051599	Manulife Financial Corporation	President and Fellows of Harvard College.	Cathlamet Timber Company, LLC, CNI Timber Hold Co., ETT Company, LLC, ETT, L.P., Rainier Mineral Company, LLC, Rainier Timber Company, LLC, Walden Forest Investments, L.P.
TRANSACTIONS GRANTED EARLY TERMINATION—09/28/2005			
20051568	Per-Se Technologies, Inc	NDCHealth Corporation	NDCHealth Corporation.
20051575	Wolters Kluwer nv	NDCHealth Corporation	NDC Health Information Service (Arizona) Inc.
20051616	ACCESS Co., Ltd	PalmSource, Inc	PalmSource, Inc.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—09/29/2005			
20050639	The Proctor & Gamble Company	The Gillette Company	The Gillette Company.
20051524	The Pepsi Bottling Group, Inc	The Henry B. Fowler Trust	Pepsi-Cola Bottling Company of Charlotte, Inc.
20051531	Symantec Corporation	Sygate Technologies, Inc	Sygate Technologies, Inc.
20051608	O'Neal Steel, Inc	Superior Group, Inc	TW Metals, Inc.
20051612	AMETEK, Inc	HCC Industries Inc	HCC Industries Inc.
20051615	Carlyle Partners IV, L.P	AxleTech International Holdings, Inc	AxleTech International Holdings, Inc.
20051617	Building Material Holding Corporation	Robert R. Thomas, Trustee o/t R.R. Thomas Trust dated 4/4/99.	HnR Framing Systems, Inc., Home Building Components, Inc.
20051618	Harris Corporation	Leitech Technology Corporation	Leitech Technology Corporation.
20051622	Almatis Investments 2 Limited	Rhone Offshore Partners II, L.P	Almatis Investment Holding S.a.r.l.
TRANSACTIONS GRANTED EARLY TERMINATION—09/30/2005			
20051623	OCE N.V	Imagistics International Inc	Imagistics International Inc.
20051631	American Electric Power Company, Inc.	Allegheny Energy, Inc	Monogahela Power Company.
20051638	Temasek Holdings (Private) Limited	iDirect, Inc	iDirect, Inc.
20051642	ALLTEL Corporation	Telephone and Data Systems, Inc. Voting Trust.	USCC Newco, LLC.
20051645	Charterhouse Equity Partners IV, L.P	Towne Holdings, Inc	Towne Holdings, Inc.
20051654	Sun Capital Partners IV, LP	Honewell International, Inc	Indalex Inc., Indalex Limited.

For Further Information Contact: Sandra M. Peay, Contact Representative; or,

Renee Hallman, Contact Representative; Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–23048 Filed 11–21–05; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement for the Lease/Construction of a Central Records Complex in Winchester, Virginia

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of Intent with Request for Comments

SUMMARY: The General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) of 1969 to assess the potential impacts of the construction of a Central Records Complex in the delineated area of Frederick County, Virginia.

At the request of the Federal Bureau of Investigations (FBI), the GSA is proposing to provide for lease construction of up to 947,000 rentable square feet (RSF) for the creation of a Central Records Complex in the delineated areas of Frederick County, Virginia. The project proposes new construction of a records storage facility, a data center for the FBI and Department of Justice (DOJ), an administrative offices building and a common support building. This facility will consolidate the FBI's various records management activities in Washington, DC and around the country into a state-of-the-art records storage facility to comply with National Archives and Records Administration (NARA) standards.

This project will provide for the consolidation of FBI's various records management activities and relieve overcrowding at existing facilities by providing 947,000 rentable square feet for approximately 1200 employees:

- Office Building 150,000 usable square feet
- Archive Building 495,000 usable square feet
- Data Centers 227,000 usable square feet

A public advertisement was placed in the local newspapers and Fed BizOps on September 20, 2005 expressing the government's interest in acquiring an assignable land option for this project. The following three sites will serve as alternatives in the Environmental Impact Statement, including the No Action Alternative:

Alternative 1: Construct a Central Records Complex at 831 Shady Elm Road, Winchester, Virginia.

Alternative 2: Construct a Central Records Complex at the Carpers Valley Golf course (Route 50), Winchester,Virginia.

Alternative 3: Construct a Central Records Complex at 200–299 Woodbine Rd, Clear Brook, Virginia.

No Action Alternative: Under the no action alternative, the Central Records Facility will not be constructed in the delineated area of Frederick County, VA.

This alternative is included to provide a basis for comparison to the action alternatives described above as required by NEPA regulations (40 CFR 1002.14(d)).

GSA invites individuals, organizations and agencies to submit comments concerning the scope of the EIS.

The public scoping period starts with the publication of this notice in the **Federal Register** and will continue for forty five (45) days from the date of this notice. GSA will consider all comments received or postmarked by that date in defining the scope of the EIS.

GSA expects to issue a Draft EIS in Spring 2006 at which time its availability will be announced in the **Federal Register** and local media. A public comment period will commence upon publication of the Notice of Availability. The GSA will consider and respond to comments received on the Draft EIS in preparing the Final EIS.

DATES: Interested parties should submit written comments on or before January 6, 2006.

ADDRESSES: Written comments or suggestions concerning the scope of the EIS should be sent to Katrina M. Scarpato, Regional Environmental Quality Advisor (REQA), U.S. General Services Administration, 20 North 8th

Street, 8th Floor, Philadelphia, PA 19107; Fax (215) 446–6153, email *Katrina.scarpato@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Katrina M. Scarpato by phone at (215) 446–4651 or by email at *Katrina.scarpato@gsa.gov*.

Public Scoping Meetings: A public scoping meeting will provide the public with an opportunity to present comments, ask questions, and discuss concerns regarding the scope of the EIS with GSA representatives. GSA will hold a public scoping meeting in December 2005 in Winchester, VA. Once established, the specific date for this meeting will be published in the local media.

Dated: November 17, 2005

Linda Chero

Acting Regional Administrator,Mid-Atlantic Region.

[FR Doc. 05–23112 Filed 11–21–05; 8:45 am]

BILLING CODE 6820–A6–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice of conference call.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given that the Policy Committee of the 2005 White House Conference on Aging (WHCoA) will have a conference call to finalize the resolutions and other items related to the 2005 WHCoA. The conference call will be open to the public to listen, with call-ins limited to the number of telephone lines available. Individuals who plan to call in and need special assistance, such as TTY, should inform the contact person listed below in advance of the conference call. This notice is being published less than 15 days prior to the conference call due to scheduling problems.

DATES: The conference call will be held on Tuesday, November 22, 2005, at 4:30 p.m., eastern standard time.

ADDRESSES: The conference call may be accessed by dialing, U.S. toll-free, 1–800–857–0419, passcode: 8932323, on the date and time indicated above.

FOR FURTHER INFORMATION CONTACT: Kim Butcher, (301) 443–2887, or e-mail at *Kim.Butcher@whcoa.gov*. Registration is not required. Call in is on a first come, first-served basis.

SUPPLEMENTARY INFORMATION: Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000), the Policy Committee will have a meeting by conference call to finalize on the resolutions that will be mailed to the delegates for review prior to the WHCoA that is scheduled from December 11 to 14, 2005. The public is invited to listen by dialing the telephone number and using the passcode listed above under the **ADDRESSES** section.

Dated: November 17, 2005.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. 05–23103 Filed 11–21–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 F 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 65901–65902, dated November 1, 2005) is amended to reorganize the Pittsburgh Research Laboratory, National Institute for Occupational Safety and Health.

Section C–B, Organization and Functions, is hereby amended as follows:

After the title for the *Pittsburgh Research Laboratory (CCB),* delete the functional statement and insert the following:

Pittsburgh Research Laboratory (CCB). (1) Provides national and international leadership for prevention of work-related illness, injury, and fatalities of mine workers; (2) carries out the surveillance of fatal and non-fatal traumatic injuries, occupational diseases, health and safety hazards, and the use of control technology and protective equipment for prevention of injury and disease in mining; (3) conducts research on the measurement, monitoring, and control of dusts and other respiratory hazards to which miners may be exposed; (4) conducts laboratory and field research to evaluate and control hearing loss and occupational noise exposure in mining; (5) conducts field investigations and laboratory studies on mining injuries and the means for their prevention; (6) conducts laboratory and field investigations to better understand the causes of catastrophic events that may lead to fatalities, such as fires, explosions, and structural or ground failures; (7) develops sensors, predictive models, engineering controls, and improved practices to reduce miners' risk for injury or death; (8) conducts laboratory and field research to develop interventions and methods to reduce repetitive/cumulative musculoskeletal injuries; (9) translates research findings, new control technology concepts, and newly identified approaches to health and safety problems affecting miners into usable effective interventions; (10) assesses the effectiveness of interventions to prevent occupational injuries and illnesses; and (11) utilizes the unique facilities and resources of the laboratory, including its three mines: the experimental coal mine, the safety research coal mine, and the Lake Lynn experimental hard rock mine, as a national resource in collaboration with other NIOSH units as well as other departments and agencies of the government to address problems in heavy construction and other areas with common links to mining problems.

Mining Respiratory Hazards Control Branch (CCBC). (1) Develops, plans, and implements a program of research to develop or improve personal and area direct reading instruments for measuring mining contaminants including, but not limited to, respirable dust, silica, and diesel particulate; (2) conducts field tests, experiments and demonstrations of new technology for monitoring and assessing mine air quality; (3) designs, plans, and implements laboratory and field research to develop airborne hazard reduction control technologies; (4) carries out field surveys in mines to identify work organization strategies that could result in reduced dust and diesel particulate exposure; (5) evaluates the performance, economics, and technical feasibility of engineering control strategies, novel approaches, and the application of new or emerging technologies for underground and surface mine dust and respiratory hazard control systems; and (6) develops and evaluates implementation strategies for using newly developed monitors and control technology for exposure reduction or prevention.

Hearing Loss Prevention Branch (CCBD). (1) Plans and conducts laboratory and field research on noise-induced hearing loss in miners; (2) conducts field dosimetric and audiometric surveys to asses the extent

and severity of the problem, to identify those mining segments in greatest need of attention, and to objectively track progress in meeting hearing loss prevention goals; (3) conducts field and laboratory research to identify noise generation sources and to identify those areas most amenable to intervention activities; (4) develops, tests, and demonstrates new control technologies for noise reduction; (5) evaluates the technical and economic feasibility of controls; (6) develops, evaluates, recommends and empowers workers with implementation strategies to promote the adoption and use of noise reduction technology; and (7) improves the reliability of communication in noise workplaces.

Mining Injury Prevention Branch (CCBE). (1) Conducts laboratory, field, and computer modeling research to focus on human physiological capabilities and limitations and their interactions with mining jobs, tasks, equipment, and the mine work environment; (2) assesses the health and safety relevance of mining equipment design features using scientific and engineering techniques, and analyses of reported case-studies of mining incidents that lead to traumatic injuries or fatalities; (3) designs and conducts epidemiological research studies to identify and classify risk factors that cause, or may cause, traumatic and cumulative/repetitive injuries to miners; (4) designs, builds, and tests proposed interventions, including demonstrations of proposed technologies using laboratory mock-ups, full-scale demonstrations at the laboratory's experimental mines, or through field evaluation in operating mines; (5) evaluates and recommends implementation strategies for injury prevention and control technologies developed by the laboratory; (6) conducts human factors research and provides effective training and work organization techniques for mining; and (7) conducts laboratory and field research on electrical safety issues in mining.

Disaster Prevention and Response Branch (CCBG). (1) Conducts laboratory and field investigations of catastrophic events such as mine fires, inundations, and explosions to better understand cause and effect relationships that initiate such events; (2) develops new or improved strategies and technologies for mine fire prevention, detection, control, and suppression; (3) investigates and develops an understanding of the critical parameters and their interrelationships governing the mitigation and propagation of explosions, and develops and facilitates the implementation of interventions to prevent mine explosions; (4) evaluates and recommends implementation strategies for disaster prevention and response; (5) develops technologies and guidelines to mitigate or prevent mine inundations; (6) works with the mining industry and other government agencies to ensure a network of well-trained mine rescue teams exists; (7) develops and/or evaluates new technology for mine rescue teams; (8) develops training curricula for mine rescue and firefighting in coordination with other health education, health communication, and other information and education activities of the institute; and (9) identifies and evaluates emerging health and safety issues as mining operations move into more challenging and dangerous geologic conditions.

Surveillance and Research Support Branch (CCBH). (1) Collects and analyzes health and safety data related to mining occupations in order to report on the overall incidence, prevalence and significance of occupational safety and health problems in mining; (2) describes trends in incidence of mining-related fatalities, morbidity, and traumatic injury; (3) conducts surveillance on the use of new technology, the use of engineering controls, and the use of protective equipment in the mining sector; (4) coordinates surveillance activities with other NIOSH surveillance initiatives; (5) provides statistical support for surveillance and research activities of the laboratory; (6) analyzes and assists in the development of research protocols for developing studies; (7) coordinates planning, analysis, and evaluation of the PRL research program for achieving organizational goals; (8) collaborates with research staff to translate findings from laboratory research to produce compelling products that motivate the mining sector to engage in improved injury control and disease prevention activities; and (9) coordinates with other health communication, health education, and information dissemination activities within NIOSH and CDC to ensure that mining research information is effectively integrated into the CDC dissemination and intervention strategies.

Rock Safety Engineering Branch (CCBJ). (1) Conducts laboratory and field investigations of catastrophic events such as catastrophic structural or ground failures to better understand cause and effect relationships that initiate such events; (2) designs, evaluates, and implements appropriate intervention strategies and engineering controls to prevent ground failures; (3) develops, tests, and promotes the use of rock safety engineering prediction and risk evaluation systems for control or reduction of risk; and (4) addresses health and safety issues resulting from the use of explosives, and develops criteria and tests to determine their suitability for mine use and transportation.

Delete in their entirety the title and functional statement for the *Surveillance, Statistics and Research Support Activity (CC22).*

Dated: November 4, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–23037 Filed 11–21–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities State Plan.

OMB No.: 0980–0162.

Description: A Plan developed by the State Council on Developmental Disabilities is required by federal statute. Each State Council on Developmental Disabilities must develop the plan, provide for public comments in the State, provide for approval by the State's Governor, and finally submit the plan on a five-year basis. On an annual basis, the Council must review the plan and make any amendments. The State Plan will be used (1) by the Council as a planning document; (2) by the citizenry of the State as a mechanism for commenting on the plans of the Council; and (3) by the Department as a stewardship tool, for ensuring compliance with the Developmental Disabilities Assistance and Bill of Rights Act, as one basis for providing technical assistance (*e.g.*, during site visits), and as a support for management decision making.

Respondents: State and Tribal Govenments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan on Developmental Disabilities	55	1	80	4,400

Estimated Total Annual Burden Hours: 4,400.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF.

E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: November 5, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–23081 Filed 11–21–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: April 2006 Current Population Survey Supplement on Child Support.

OMB No. 0992–0003.

Description: Collection of these data will assist legislators and policymakers in determing how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals and Households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Support Survey	41,300	1	.0241666	998

Estimated Total Annual Burden Hours: 998.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Inforamtion Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarify 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 15, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–23082 Filed 11–21–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Form ACF–IV–E–1: Title VI–E Foster Care and Adoption Assistance Financial Report.

OMB No.: 0970–0205.

Description: State agencies administer the Foster Care and Adoption Assistance Programs under Title IV–E of the Social Security Act. The Administration for Children and Families (ACF) provides Federal funding at the rate of 50 percent for most administrative and other related costs and at an enhanced rate of 75 percent for training costs as detailed in Federal statute and regulations. This form is submitted quarterly by each State to estimate the funding needs for the upcoming fiscal quarter and to

report expenditures for the fiscal quarter just ended. This form is also used to provide annual budget projections from each State. The information collected in this report is used by this agency to calculate quarterly Federal grant awards and to enable this agency to submit budget requests to Congress through the Department and to enable oversight of the financial management of the programs.

Comments have been sent to the ACF Office of Grants Management, both directly and in response to an earlier **Federal Register** Notice (70 FR 29318, May 20, 2005), which provided many useful recommendations to update and improve this financial reporting form.

Whenever a financial reporting form is revised, conforming changes are also required in the computerized financial and grant data entry system maintained by ACF and in similar financial systems maintained by each State grantee. We believe that insufficient time remains to permit all these changes to be completed to accommodate the introduction of a revised reporting form by the January 30, 2006, expiration date of the OMB approval of the existing form. In addition, the Government Accountability Office (GAO) is currently conducting a thorough review of administrative costs of both programs under Title IV–E and does not anticipate publication of its final report before spring 2006. As part of its review, GAO is including the reporting requirements of the existing quarterly report and may include recommendations to revise this report in its findings.

For these reasons, we have determined it would not be feasible to introduce revised reporting requirements at this time, especially before we have had the opportunity to thoroughly review the upcoming GAO report and whatever relevant recommendations it may contain. Therefore, we are requesting that the expiration date of the existing forms be extended, without change, through September 340, 2008, with the understanding that a revised report will be introduced before that date as conditions warrant.

Respondents: State agencies administering the Foster Care and Adoption Assistance Programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form ACF–IV–E–1	52	4	17	3,536

Estimated Total Annual Burden Hours: 3,536.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. E-mail: *infocollection@acf.hhs.gov.* Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reducation Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: November 15, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–23083 Filed 11–21–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures.

OMB No.: 0970–0230.

Description: This is a proposed reinstatement of a previously approved information collection. The purpose of this collection is to obtain data upon which to base the computation for measuring State performance in meeting the legislative goals of TANF as specified in section 403(a)(4) of the Social Security Act and 45 CFR part 270. Specifically, the Department of Health and Human Services (HHS) will use the data to award the portion of the bonus that rewards States for their success in moving TANF recipients from welfare to work. States will not be required to submit this information unless they elect to compete on a work measure for the TANF High Performance Bonus awards.

Respondents: Respondents may include any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures.	54	2	16	1,728

Estimated Total Annual Burden Hours: 1,728.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the

collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: November 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–23084 Filed 11–21–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Invitation to Comment on Proposed Data Composites and Potential Performance Areas and Measures for the Child and Family Services Review

AGENCY: Children's Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Correction notice to the following action: Invitation to comment on proposed data composites and potential performance areas and measures for the Federal Child and Family Services Review (CFSR).

Corrective Action: The initial publication in the **Federal Register** on November 7, 2005 (70 FR 67479) inadvertently omitted the date that the comments are due to the Children's Bureau. The due date for comments is December 7, 2005.

Dated: November 17, 2005.

Reginia H. Ryan,

Director, Executive Secretariat, ACYF.

[FR Doc. 05–23206 Filed 11–21–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0153]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Regulations For In Vivo Radiopharmaceuticals Used For Diagnosis and Monitoring'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 3, 2005 (70 FR 22887), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0409. The approval expires on October 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: November 15, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23039 Filed 11–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0343]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Requesting an Extension to Use Existing Label Stock After the Trans Fat Labeling Effective Date of January 1, 2006

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 proposed collection of information associated with the guidance document entitled ''Requesting an Extension to Use Existing Label Stock After the *Trans* Fat Labeling Effective Date of January 1, 2006.'' Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the Office of Management and Budget (OMB's) approval of this collection of information (OMB control number 0910–0571). Since this was an emergency approval that expires on January 1, 2006, FDA is following the normal PRA clearance procedures by issuing this notice.

DATES: Submit written or electronic comments on the collection of information by January 23, 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 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.

Guidance for Requesting an Extension to Use Existing Label Stock After the *Trans* Fat Labeling Effective Date of January 1, 2006 (OMB Control Number 0910–0571)—Extension

This policy provides guidance to FDA and the food industry about when and how businesses may request the agency to consider enforcement discretion for the use of some or all existing label stock, that does not declare *trans* fat labeling in compliance with the final rule, on products introduced into interstate commerce on or after the January 1, 2006, effective date.

Industry Compliance With the *Trans* Fat Final Rule

FDA issued a final rule (the *trans* fat final rule) on July 11, 2003, (68 FR 41434) to require food labels to bear the gram (g) amount of *trans* fat without a percent Daily Value (% DV)directly under the saturated fat line on the Nutrition Facts panel (*http://www.cfsan.fda.gov/~acrobat/fr03711a.pdf*). The *trans* fat final rule affects almost all manufacturers of packaged, labeled food sold in the United States. FDA believes that most businesses, including small businesses, should not have difficulty meeting the January 1, 2006, effective date of the *trans* fat final rule. However, under certain circumstances some businesses may want to request that the agency consider an extension of time to use current labels that are not in compliance with the *trans* fat final rule. Therefore, the agency believes that it would be appropriate to consider, on a case-by-case basis, whether to exercise enforcement discretion on the January 1, 2006, effective date for *trans* fat labeling for some businesses that can make an appropriate showing.

The agency intends to consider the following factors in any request froma firm for the agency's exercise of enforcement discretion:

- Whether products contain 0.5 g or less *trans*fat;
- The explanation of why the request is being made;
- The number of existing labels that the firm is requesting to use;
- The dollar amount associated with the number of existing labels to be used; and
- The estimate of the amount of time needed, not exceeding 12 months, to exhaust the number of existing labels the firm is requesting to use.

Requests may be considered at any time before or after the January 1, 2006, effective date of the *trans* fat final rule. Firms may submit their requests in writing to FDA's Center for Food Safety and Applied Nutrition. Firms are encouraged to keep this letter of request for their records and should make a copy available for inspection to any FDA officer or employee of who requests it. FDA intends to use the information in the letter to make decisions about whether a firm's product is subject to FDA's enforcement discretion for the *trans* fat labeling requirements.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Written requests to FDA in year one	56	1	56	5	280
Written requests to FDA in year two	28	1	28	5	140
Onetime burden hours for years one and two					420

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates a 2-year time period during which these requests will be made following the issuance of this guidance. Beyond 2 years, FDA expects businesses to fully comply with the *trans* fat final rule, as it is unlikely that there will still be old labeling stock left to use.

FDA expects that, although all sizes of business are eligible, small businesses and very small businesses are the firms most likely to be able to demonstrate a need to request an extension to the *trans* fat labeling deadline. The agency has already received three requests from businesses regarding the *trans* fat labeling compliance date of January 1, 2006. Because small businesses are more likely to submit requests for extensions, and most of the affected businesses are small, we use the number of small businesses as the base to calculate the reporting burden. The regulatory flexibility analysis of the *trans* fat final rule estimated that 11,180 small businesses will have to revise the labels on their products as a result of the *trans* fat final rule. Given that only three businesses have submitted requests to FDA so far, FDA estimates that, in the first year following the issuance of the guidance, the total number of businesses that will request a labeling compliance extension from FDA can be estimated as approximately 0.5 percent of the number of small businesses, which equals 56.

FDA estimates that it will take one employee approximately 4 hours to put together a request to FDA and approximately 1 hour for a supervisor to look over the request before submitting

it to the agency. Thus, each firm submitting a compliance extension request will need 5 hours of employee time to complete the request. Given that 56 businesses are expected to submit written requests in year one, the total burden hours for year one are 280.

In year two, FDA expects about one-half as many firms to request a labeling compliance extension. So for year two, 28 firms are expected to file a request for an extension to the labeling compliance date. Again, assuming that it will take 5 hours to complete each request, the total burden hours for year two will be 140.

Dated: November 14, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23040 Filed 11–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0343]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Requesting an Extension to Use Existing Label Stock After the Trans Fat Labeling Effective Date of January 1, 2006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Requesting an Extension to Use Existing Label Stock after the *Trans* Fat Labeling Effective Date of January 1, 2006'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing an opportunity for public comment on this collection of information. Since this collection received emergency approval that expires on January 1, 2006, FDA is following the normal PRA clearance procedures by issuing that notice.

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 the **Federal Register** of September 1, 2005 (70 FR 52108), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0571. The approval expires on January 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: November 14, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23041 Filed 11–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 12, 2005, 9 a.m.—5 p.m., EST.

Place: Audio Conference Call and Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Monday, December 12, from 9 a.m. to 5 p.m. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–800–369–6048 on December 12 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the December meeting will include, but are not limited to: A summary of the U.S. Court of Federal Claims' 18th Judicial Conference; a report from the ACCV Workgroup looking at proposed guidelines for future changes to the Vaccine Injury Table; and updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics and Evaluation Research (Food and Drug Administration). Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail *clee@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–2124 or e-mail *clee@hrsa.gov*.

Dated: November 15, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–23042 Filed 11–21–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Special Advisory Bulletin on Patient Assistance Programs for Medicare Part D Enrollees

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: OIG periodically develops and issues guidance, including Special Advisory Bulletins, to alert and inform the health care industry about potential problems or areas of special interest. This **Federal Register** notice sets forth the recently issued OIG Special Advisory Bulletin addressing patient assistance programs for Medicare Part D enrollees.

FOR FURTHER INFORMATION CONTACT: Darlene M. Hampton, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

Special Advisory Bulletin: Patient Assistance Programs for Medicare Part D Enrollees (November 2005)

I. Introduction

Patient assistance programs (PAPs) have long provided important safety net assistance to patients of limited means

who do not have insurance coverage for drugs, typically serving patients with chronic illnesses and high drug costs. PAPs are structured and operated in many different ways. PAPs may offer cash subsidies, free or reduced price drugs, or both. Some PAPs offer assistance directly to patients, while others replenish drugs furnished by pharmacies, clinics, hospitals, and other entities to eligible patients whose drugs are not covered by an insurance program. Some PAPs are affiliated with particular pharmaceutical manufacturers; others are operated by independent charitable organizations (such as, for example, patient advocacy and support organizations) without regard to any specific donor or industry interests.

Many pharmaceutical manufacturers have historically sponsored PAPs that assist patients whose outpatient prescription drugs are not covered by an insurance program (including some Medicare beneficiaries), in obtaining the manufacturer's products for free or at greatly reduced cost. Beginning on January 1, 2006, Medicare Part D will offer Medicare beneficiaries who elect to enroll broad coverage for outpatient prescription drugs. Accordingly, Medicare beneficiaries who enroll in Part D will no longer qualify under traditional PAP eligibility criteria. Part D enrollees will incur cost-sharing obligations (including deductibles and copayments), although many low-income beneficiaries will qualify for subsidies that will reduce or eliminate their financial obligations.[1] Pharmaceutical manufacturers have expressed interest in continuing to assist Medicare Part D enrollees of limited means who do not qualify for the low-income subsidy.

OIG is mindful of the importance of ensuring that financially needy beneficiaries who enroll in Part D receive medically necessary drugs, and OIG supports efforts of charitable organizations and others to assist financially needy beneficiaries, as long as the assistance is provided in a manner that does not run afoul of the Federal anti-kickback statute or other laws.[2] We have been asked whether the anti-kickback statute will be implicated if pharmaceutical manufacturer PAPs[3] continue to offer assistance to financially needy Medicare beneficiaries who enroll in Part D by subsidizing their cost-sharing obligations for covered Part D drugs. For the reasons set forth below and consistent with extant OIG guidance, we conclude that pharmaceutical manufacturer PAPs that subsidize Part D cost-sharing amounts present heightened risks under the anti-kickback statute. However, in the circumstances described in this Bulletin, cost-sharing subsidies provided by *bona fide*, independent charities unaffiliated with pharmaceutical manufacturers should not raise anti-kickback concerns, even if the charities receive manufacturer contributions. In addition, we believe other arrangements described in this Bulletin, if properly structured, may pose reduced risk. Thus, we believe lawful avenues exist for pharmaceutical manufacturers and others to help ensure that all Part D beneficiaries can afford medically necessary drugs.

Given the importance of ensuring continued access to drugs for beneficiaries of limited means and the expedited time frame for implementation of the Part D benefit, we are issuing this Special Advisory Bulletin to identify potentially abusive PAP structures, as well as methods of providing assistance that mitigate or vitiate the potential for fraud and abuse. This Special Advisory Bulletin draws on the government's prior fraud and abuse guidance and enforcement experience. However, because the Part D benefit has not yet begun, and any assessment of fraud and abuse is necessarily speculative, this Bulletin cannot, and is not intended to, be an exhaustive discussion of relevant risks or beneficial practices.

At the outset, it is important to note the following:

- PAPs need not disenroll all Medicare beneficiaries from their existing PAPs to be compliant with the fraud and abuse laws. Enrollment in Part D is voluntary; therefore, existing PAPs may continue to provide free or reduced price outpatient prescription drugs to Medicare beneficiaries who have not yet enrolled in Part D. The Centers for Medicare & Medicaid Services (CMS) anticipates instituting procedures that will help PAPs determine if PAP clients have enrolled in Part D.
- Occasional, inadvertent cost-sharing subsidies provided by a pharmaceutical manufacturer PAP to a Part D enrollee should not be problematic under the anti-kickback statute (*e.g.*, where, despite due diligence, a pharmaceutical manufacturer PAP does not know and should not have known that a beneficiary has enrolled in Medicare Part D).
- Nothing in the Part D program or in any OIG laws or regulations prevents pharmaceutical manufacturers or others from providing assistance (*e.g.*, through cash subsidies or free drugs) to uninsured patients. Nothing in this Bulletin impacts programs that assist uninsured patients.
- Nothing in this guidance should be construed as preventing pharmacies from waiving cost-sharing amounts owed by a Medicare beneficiary on the basis of a good faith, individualized assessment of the patient's financial need (or failure of reasonable collection efforts), so long as the waiver is neither routine, nor advertised. Financial need-based waivers that meet these criteria have long been permitted.[4] However, a pharmacy has not waived a cost-sharing amount if the amount has been paid to the pharmacy, in cash or in kind, by a

[1] *See* 42 CFR 423.782.

[2] This Bulletin focuses on the application of the Federal anti-kickback statute. Other potential risk areas, including, for example, potential liability under the False Claims Act, 31 U.S.C. 3729–33, or other Federal or State laws, are not addressed here. Moreover, this Bulletin focuses on arrangements that involve pharmaceutical manufacturers directly or indirectly subsidizing Part D cost-sharing amounts. Programs that subsidize Part D premium amounts pose risks under the anti-kickback statute that are not addressed here. Similarly, PAPs established by health plans that subsidize cost sharing or premium amounts under Part D raise different issues and may require a different analysis. While this Bulletin may provide some useful guidance for other kinds of PAP arrangements, such PAPs are not specifically considered here.

[3] For purposes of this Special Advisory Bulletin, a pharmaceutical manufacturer PAP includes any PAP that is directly or indirectly operated or controlled in any manner by a pharmaceutical manufacturer or its affiliates (including, without limitation, any employee, agent, officer shareholder, or contractor (including, without limitation, any wholesaler, distributor, or pharmacy benefits manager)). Moreover, for purposes of an anti-kickback analysis, we would not consider a charitable foundation (or similar entity) formed, funded or controlled by a manufacturer or any of its affiliates (including, without limitation, any employee, agent, officer, shareholder, or contractor (including, without limitation, any wholesaler, distributor, or pharmacy benefits manager)) to be a *bona fide*, independent charity, because interposition of the entity would not sever the nexus between the patient subsidies and the manufacturer. Indeed, in most cases, the foundation would receive all of its funding from the pharmaceutical manufacturer (or its affiliates) and would provide subsidies only for the manufacturer's products.

[4] *See, e.g.*, section 1128A(i)(6)(A) of the Act; OIG Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries, August 2002, *http:oig.hhs.gov/fraud/docs/alertsandbulletins/SABGiftsandInducements.pdf.* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) included a safe harbor specifically incorporating these criteria for waivers of cost-sharing amounts for Part D drugs. Additionally, the safe harbor protects cost-sharing waivers offered to individuals who qualify for the low income subsidy, even if the waivers are routine and do not follow an individualized determination of financial need, provided they are not advertised. *See* Section 1860D–42 of MMA, codified at 42 U.S.C. 1320a–7b(b)(3)(G).

third party (including, without limitation, a PAP).

II. The Federal Anti-Kickback Statute

The Federal anti-kickback statute, section 1128B(b) of the Social Security Act (the Act),[5] makes it a criminal offense knowingly and willfully to offer, pay, solicit, or receive any remuneration to induce or reward the referral or generation of business reimbursable by any Federal health care program, including Medicare and Medicaid. Where remuneration is paid purposefully to induce or reward referrals of items or services payable by a Federal health care program, the anti-kickback statute is violated. By its terms, the statute ascribes criminal liability to parties on both sides of an impermissible ''kickback'' transaction. For purposes of the anti-kickback statute, ''remuneration'' includes the transfer of anything of value, directly or indirectly, overtly or covertly, in cash or in kind. The statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals. Violation of the statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to five years, or both. OIG may also initiate administrative proceedings to exclude a person from Federal health care programs or to impose civil money penalties for kickback violations under sections 1128(b)(7) and 1128A(a)(7) of the Act.[6]

A determination regarding whether a particular arrangement violates the anti-kickback statute requires a case-by-case evaluation of all of the relevant facts and circumstances, including the intent of the parties. For PAPs, the nature, structure, sponsorship, and funding of the particular PAP are necessarily relevant to the analysis.

III. Patient Assistance Programs

As described more fully below, cost-sharing subsidies provided by pharmaceutical manufacturer PAPs pose a heightened risk of fraud and abuse under the Federal anti-kickback statute. However, there are non-abusive alternatives available. In particular, as discussed below, pharmaceutical manufacturers can donate to *bona fide* independent charity PAPs, provided appropriate safeguards exist. Moreover, this Bulletin discusses several other alternatives that may pose a reduced risk of fraud and abuse.

This section addresses in turn: pharmaceutical manufacturer PAPs, independent charity PAPs, manufacturer PAPs that operate ''outside of Part D''; ''coalition model'' PAPs, and bulk replacement programs.

A. Pharmaceutical Manufacturer PAPs

Analytically, pharmaceutical manufacturer PAPs raise two main issues in connection with the Part D program: (i) Whether subsidies they provide can count toward a Part D enrollee's true out-of-pocket costs (known as the TrOOP); and (ii) whether the subsidies implicate the Federal anti-kickback statute.[7]

As to the first issue, the Part D regulations make clear that beneficiaries may count toward their TrOOP assistance received from any source other than group health plans, other insurers and government funded health programs, and similar third party payment arrangements.[8] The preamble to the Part D regulations explains that cost-sharing assistance furnished by a PAP, including a manufacturer PAP, will count toward a beneficiary's TrOOP expenditures, even if the PAP does not comply with the fraud and abuse laws.[9] This approach relieves beneficiaries of the financial risk of accepting assistance from an entity that may be improperly structured or operated.

As to the second issue, the core question is whether the anti-kickback statute would be implicated if a manufacturer of a drug covered under Part D were to subsidize cost-sharing amounts (directly or indirectly through a PAP) incurred by Part D beneficiaries for the manufacturer's product. Consistent with our prior guidance addressing manufacturer cost-sharing subsidies in the context of Part B drugs,[10] we believe such subsidies for Part D drugs would implicate the anti-kickback statute and pose a substantial risk of program and patient fraud and abuse.[11] Simply put, the subsidies would be squarely prohibited by the statute, because the manufacturer would be giving something of value (*i.e.*, the subsidy) to beneficiaries to use its product. Where a manufacturer PAP offers subsidies tied to the use of the manufacturer's products (often expensive drugs used by patients with chronic illnesses), the subsidies present all of the usual risks of fraud and abuse associated with kickbacks, including steering beneficiaries to particular drugs; increasing costs to Medicare; providing a financial advantage over competing drugs; and reducing beneficiaries= incentives to locate and use less expensive, equally effective drugs.

It is impossible to predict with certainty the way in which abuse may occur in a new benefit program that is not yet operational. The following are illustrative examples of some types of abuse that may occur:

- Increased costs to the program. We are concerned that a manufacturer might use beneficiary cost-sharing subsidies, which help beneficiaries meet their TrOOP requirement, to increase the number of beneficiaries using the manufacturer's product who reach the

[5] 42 U.S.C. 1320a–7b(b).

[6] 42 U.S.C. 1320a–7(b)(7); 42 U.S.C. 1320a–7a(a)(7).

[7] In some cases, a subsidy for Part D cost-sharing obligations provided by a pharmaceutical manufacturer may also implicate the prohibition on offering inducements to beneficiaries, as set forth in section 1128A(a)(5) of the Act, if the subsidy is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier, such as a physician or pharmacy. We have interpreted ''provider, practitioner, or supplier'' to exclude pharmaceutical manufacturers unless they also own or operate pharmacies, pharmaceutical benefits management companies, or other entities that file claims for payment under the Medicare or Medicaid programs. *See* Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries, supra note 4.

[8] *See* 42 CFR 423.100; 42 CFR 423.464; 70 FR 4194, 4239 (January 28, 2005). We note that CMS is the proper agency to address questions about the mechanics of calculating TrOOP. In certain circumstances, knowing improper TrOOP calculations may give rise to liability under the False Claims Act, 31 U.S.C. 3729–33.

[9] *See* 70 FR 4194 at 4239.

[10] *See, e.g.*, OIG Advisory Opinion Nos. 02–13 and 03–3 (unfavorable opinions involving proposals from pharmaceutical manufacturer PAPs to subsidize Part B cost-sharing amounts). We note that the cost and utilization management features of the Part D program, while important, do not sufficiently mitigate the risks.

[11] Some in the industry have asserted that cost-sharing subsidies for Part D drugs differ from cost-sharing subsidies for Part B drugs so long as the subsidies are given to patients who are in a Part D ''coverage gap'' (*i.e.*, a benefit period during which the beneficiary pays 100% of the cost of the drugs). To support their position, they contend either that beneficiaries in the coverage gap are functionally ''uninsured'' or that the situation is comparable to providing free drugs to financially needy beneficiaries so long as no Federal health care program is billed for all or part of the drug, a practice we previously permitted in the context of subsidies for Part B drugs. *See* OIG Advisory Opinion Nos. 02–13 and 03–3. Under Part D, a ''coverage gap'' is a period of insurance coverage. *See* CMS Frequently Asked Question ID 4855, *http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_adp.php?p_faqid=4855* (regarding prescription drug benefit coordination of benefits and TrOOP). During the coverage gap, beneficiaries remain enrolled in their Part D plans and have a continuing obligation to pay Part D premiums; Part D plans continue to receive the monthly per-enrollee direct subsidy from the Medicare program. Moreover, subsidies during the coverage gap are not like furnishing free drugs where no Federal health care program is billed. Sufficient spending during the coverage gap qualifies the beneficiary to reach the catastrophic coverage portion of the Part D benefit, at which point the Medicare program resumes payment for most of the costs of the beneficiary's drugs. In this regard, the different structures of the Part B and Part D benefits are crucial to the analysis.

catastrophic benefit in any given coverage year and to hasten the point during the coverage year at which beneficiaries reach the catastrophic benefit. This is of particular import because Medicare will make cost-based payments during the catastrophic coverage benefit.[12] We know from experience that cost-based reimbursement is inherently prone to abuse, including by vendors that sell products reimbursed on a cost basis. Similarly, we are concerned about the use of cost-sharing subsidies to shield beneficiaries from the economic effects of drug pricing, thus eliminating a market safeguard against inflated prices. Inflated prices could have a ''spillover'' effect on the size of direct subsidies, reinsurance payments, and risk corridor payments paid by Medicare to Part D plans in future years,[13] potentially resulting in higher costs to the Medicare program.

• Beneficiary steering and anti-competitive effects. Subsidies provided by traditional pharmaceutical manufacturer PAPs have the practical effect of locking beneficiaries into the manufacturer's product, even if there are other equally effective, less costly alternatives (and even if the patient's physician would otherwise prescribe one of these alternatives). Subsidizing Medicare Part D cost-sharing amounts will have this same steering effect. Moreover, as we have previously noted in the Part B context, cost-sharing subsidies can be very profitable for manufacturers, providing additional incentives for abuse. So long as the manufacturer's sales price for the product exceeds its marginal variable costs plus the amount of the cost-sharing assistance, the manufacturer makes a profit. These profits can be considerable, especially for expensive drugs for chronic conditions. We are concerned that pharmaceutical manufacturers may seek improperly to maximize these profits by creating sham ''independent'' charities to operate PAPs; by colluding with independent charity programs to ensure that the manufacturer's contributions only or primarily benefit patients using its products (discussed in more detail below); or by manipulating financial need or other eligibility criteria to maximize the number of beneficiaries qualifying for cost-sharing subsidies.

These risks are necessarily illustrative, not exhaustive, of the potential risks presented by pharmaceutical manufacturer PAPs that subsidize Part D cost-sharing amounts.

Cost-sharing subsidies offered by a pharmaceutical manufacturer PAP to the dispensing supplier differ in two important respects from a provider's or supplier's unadvertised, non-routine waiver of cost-sharing amounts based on a patient's financial need, which has long been permitted. First, the subsidies result in the dispensing supplier receiving full payment for the product and avoiding the risk of non-collection, thus providing the supplier with an economic incentive to favor the subsidized product and a disincentive to recommend a lower-cost alternative, such as a generic. In addition, the availability of PAP assistance is typically advertised and may influence a beneficiary's choice of product (through the prescribing physician acting on behalf of the beneficiary). Moreover, once a beneficiary is enrolled in a pharmaceutical manufacturer PAP, the beneficiary is effectively locked into using the pharmaceutical manufacturer's product, since the beneficiary risks losing financial assistance if he or she switches products, even if an equally effective, but less expensive, product would be in his or her best medical interests.

A definitive conclusion regarding whether a particular manufacturer PAP violates the anti-kickback statute would require a case-by-case analysis of all of the relevant facts and circumstances, including the intent of the parties. However, for the reasons noted above, we believe that pharmaceutical manufacturer PAPs that subsidize Part D cost-sharing amounts raise substantial concerns under the anti-kickback statute.

B. Independent Charity PAPs

Long-standing OIG guidance makes clear that pharmaceutical manufacturers can effectively contribute to the pharmaceutical safety net by making cash donations to independent, *bona fide* charitable assistance programs.[14]

Under a properly structured program, donations from a pharmaceutical manufacturer to an independent, *bona fide* charity that provides cost-sharing subsidies for Part D drugs should raise few, if any, anti-kickback statute concerns, so long as:

(i) Neither the pharmaceutical manufacturer nor any affiliate of the manufacturer (including, without limitation, any employee, agent, officer, shareholder, or contractor (including, without limitation, any wholesaler, distributor, or pharmacy benefits manager)) exerts any direct or indirect influence or control over the charity or the subsidy program;

(ii) The charity awards assistance in a truly independent manner that severs any link between the pharmaceutical manufacturer's funding and the beneficiary (*i.e.*, the assistance provided to the beneficiary cannot be attributed to the donating pharmaceutical manufacturer);

(iii) The charity awards assistance without regard to the pharmaceutical manufacturer's interests and without regard to the beneficiary's choice of product, provider, practitioner, supplier, or Part D drug plan;

(iv) The charity provides assistance based upon a reasonable, verifiable, and uniform measure of financial need that is applied in a consistent manner; and [15]

(v) The pharmaceutical manufacturer does not solicit or receive data from the charity that would facilitate the manufacturer in correlating the amount or frequency of its donations with the number of subsidized prescriptions for its products.[16]

[12] *See* 42 CFR 423.329. For purposes of calculating payments under catastrophic coverage, the cost of a beneficiary's drug is based in part on the plan's negotiated price (*i.e.*, a price that is set by the plan based on negotiations with pharmaceutical manufacturers and pharmacies).

[13] *See* 42 CFR 423.329; 42 CFR 423.336.

[14] In-kind donations of drugs to independent charity PAPs pose additional risks not yet directly addressed in prior OIG guidance, and we have insufficient experience with them to offer detailed guidance here. While in-kind donations have the potential benefit of increasing the value of donations (because marginal costs of drugs are generally low), they also have the effect of creating a direct correlation between the donation and use of a particular donor's product, thereby weakening important safeguards of an independent charity PAP arrangement. Moreover, there would appear to be difficult accounting and valuation issues raised by the use of in-kind product to subsidize Part D cost-sharing obligations, both for purposes of calculating TrOOP and for purposes of determining the amount of in-kind drug that equals the Part D cost-sharing amount owed.

[15] We recognize that what constitutes an appropriate determination of financial need may vary depending on individual patient circumstances. We believe that independent charity PAPs should have flexibility to consider relevant variables beyond income. For example, PAPs may choose to consider the local cost of living; a patient's assets and expenses; a patient's family size; and the scope and extent of a patient's medical bills.

[16] We have previously approved a *bona fide* independent charity PAP arrangement that included only limited reporting of *aggregate* data to donors in the form of monthly or less frequent reports containing *aggregate* data about the number of all applicants for assistance in a disease category and the number of patients qualifying for assistance in that disease category. *See* OIG Advisory Opinion No. 02–1. No individual patient information may be conveyed to donors. Moreover, neither patients nor donors may be informed of the donation made to the PAP by others, although, as required by Internal Revenue Service regulations, the PAP's annual report and a list of donors may be publicly available. *See* OIG Advisory Opinion No. 04–15. Reporting of data that is not in the aggregate or that is patient specific would be problematic, as would reporting of any data, whether or not in the

Simply put, the independent charity PAP must not function as a conduit for payments by the pharmaceutical manufacturer to patients and must not impermissibly influence beneficiaries' drug choices.[17]

We recognize that some *bona fide* independent charities reasonably focus their efforts on patients with particular diseases (such as cancer or diabetes) and that some of these charities permit donors to earmark their contributions generally for support of patients with a specific disease. In general, the fact that a pharmaceutical manufacturer's donations are earmarked for one or more broad disease categories should not significantly raise the risk of abuse. However, we are concerned that, in some cases, charities may artificially define their disease categories so narrowly that the earmarking effectively results in the subsidization of one (or a very few) of donor's particular products. For example, we would be concerned if disease categories were defined by reference to specific symptoms, severity of symptoms, or the method of administration of drugs, rather than by diagnoses or broadly recognized illnesses or diseases. This type of arrangement would present an elevated risk of fraud and abuse because of the increased likelihood that the PAP would function as an improper conduit for manufacturers to provide funds to patients using their specific drugs. To avoid this risk, pharmaceutical manufacturers should not influence, directly or indirectly, the identification of disease or illness categories,[18] and pharmaceutical manufacturers should limit their earmarked donations to PAPs that define categories in accordance with widely recognized clinical standards and in a manner that covers a broad spectrum of available products.[19]

C. PAPs Operating Outside Part D

CMS has issued guidance stating that PAPs may elect to provide free drugs to financially needy Medicare Part D enrollees outside the Part D benefit.[20] In these circumstances, the beneficiary obtains drugs without using his or her Part D insurance benefit. Beginning when a beneficiary's assistance under a PAP became effective, no claims for payment for any covered outpatient prescription drug provided outside of the Part D benefit may be filed with a Part D plan or the beneficiary, and the assistance must not count toward the beneficiary's TrOOP or total Part D spending for any purpose. For the reasons noted in connection with pharmaceutical manufacturer PAPs discussed above, PAPs that provide assistance outside the Part D benefit only during the coverage gap (*i.e.*, ''wrapping around'' the Part D benefit) pose a heightened risk of abuse. However, while it is difficult to assess the application of the fraud and abuse laws to PAPs that operate outside Part D absent a specific set of facts, it would appear that PAPs that furnish free outpatient prescription drugs entirely outside the Part D benefit pose a reduced risk under the anti-kickback statute, provided that:

(i) The PAP includes safeguards that ensure that Part D plans are notified that the drug is being provided outside the Part D benefit so that no payment is made for the subsidized drug by any Part D plan and no part of the costs of the subsidized drug is counted toward any beneficiary's TrOOP;

(ii) The PAP provides assistance for the whole Part D coverage year (or the portion of the coverage year remaining after the beneficiary first begins receiving the PAP assistance);[21]

(iii) The PAP assistance remains available even if the beneficiary's use of the subsidized drug is periodic during the coverage year;

(iv) The PAP maintains accurate and contemporaneous records of the subsidized drugs to permit the Government to verify the provision of drugs outside the Part D benefit;

(v) Assistance is awarded based on reasonable, uniform, and consistent measures of financial need and without regard to the providers, practitioners, or suppliers used by the patient or the Part D plan in which the patient is enrolled; and

(vi) The arrangement complies with any then-existing guidance from CMS.

In addition, to promote quality of care, we believe it would be important for PAPs that provide free drugs outside the Part D benefit to coordinate effectively with Part D plans so that the plans can undertake appropriate drug utilization review and medication therapy management program activities.

D. ''Coalition Model'' PAPs

We are aware of nascent efforts by some in the industry to develop arrangements through which multiple pharmaceutical manufacturers would join together to offer financially needy Part D enrollees a card or similar vehicle that would entitle the enrollees to subsidies of their cost-sharing obligations for the manufacturers' products, typically in the form of discounts off the negotiated price otherwise available to the enrollee under his or her Part D plan. It is premature to offer definitive guidance on these evolving programs. Although these programs would operate so that the manufacturers effectively underwrite only the discounts on their own products, we observe that the risk of an illegal inducement potentially may be reduced if: (i) The program contains features that adequately safeguard against incentives for card holders to favor one drug product (or any one supplier, provider, practitioner, or Part D plan) over another; (ii) the program includes a large number of manufacturers, including competing manufacturers and manufacturers of both branded and generic products, sufficient to sever any nexus between the subsidy and a beneficiary's choice of drug; and (iii) each participating pharmaceutical manufacturer offers subsidies for *all* of its products that are covered by *any* Part D plan formulary. Other safeguards may also be needed to reduce the risk of an improper inducement. Moreover, a program under which Part D enrollees pay a portion of their drug costs out-of-pocket would tend to reduce the risk of abuse by preserving the beneficiary's incentive to locate and purchase equally effective, lower cost drugs.

aggregate, related to the identity, amount, or nature of subsidized drugs.

[17] For further guidance on establishing compliant independent charity PAPs, see OIG Advisory Opinion Nos. 04–15, 02–1, 98–17, and 97–1 (favorable opinions issued to *bona fide*, independent charities that accept industry funding).

[18] Nothing in this Bulletin should be construed as preventing a charity from obtaining educational materials from donors that the donors generally make available to practitioners or the general public (*e.g.*, clinical information about drug products).

[19] We recognize that, in rare circumstances, there may only be one drug covered by Part D for the diseases in a particular category or only one pharmaceutical manufacturer (including its affiliates) that makes all of the Part D covered drugs for the diseases in a particular category. In these unusual circumstances, the fact that a disease category only includes one drug or manufacturer would not, standing alone, be determinative of an anti-kickback statute violation. Such a determination could only be made on a case-by-case basis after examining all of the applicable facts and circumstances, including the intent of the parties. We note that it would be important for the PAP program to cover additional products or manufacturers as they become available.

[20] *See* CMS Frequently Asked Question ID 6153, *http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_adp.php?p_faqid=6153* (regarding PAPs providing assistance with Part D drug costs to Part D enrollees outside of the Part D benefit and without counting towards TrOOP).

[21] We note that our position that PAPs operating outside the Part D benefit should provide assistance for the remainder of the coverage year is consistent with our observation in several advisory opinions that manufacturers ''may provide free drugs to financially needy beneficiaries, so long as no Federal health care program is billed for all or part of the drugs.'' OIG Advisory Opinion Nos. 02–13 and 03–3.

IV. Bulk Replacement Models

Bulk replacement'' or similar programs, pursuant to which pharmaceutical manufacturers (or their affiliated PAPs) provide in-kind donations in the form of free drugs to pharmacies, health centers, clinics, and other entities that dispense drugs to qualifying uninsured patients, are different from traditional PAPs that provide assistance directly to patients. These programs potentially implicate the Federal anti-kickback statute if the free drugs are given to a recipient that is in a position to generate Federal health care program business for the donor manufacturer. Whether a particular bulk replacement program complies with the fraud and abuse laws would require a case-by-case analysis. In undertaking any analysis, we would consider, among other factors, how the program is structured and whether there are safeguards in place: (i) To protect Federal health care program beneficiaries from being steered to particular drugs based on the financial interests of their health care providers or suppliers; (ii) to protect the Federal health care programs from increased program costs; and (iii) to ensure that bulk replacement drugs are not improperly charged to Federal health care programs. Additionally, bulk replacement as a means of subsidizing only the Medicare Part D cost-sharing amount potentially raises substantial risks related to accounting for the amount of replacement drug that would be equivalent to the cost-sharing amount owed by the beneficiary; properly attributing that amount to specific beneficiaries; and properly calculating TrOOP.

V. Transitioning From Existing Pharmaceutical Manufacturer PAPs

OIG is mindful of the importance of a smooth, effective transition for beneficiaries who are currently participating in pharmaceutical manufacturer PAPs and elect to enroll in Medicare Part D. While most such enrollees are likely to qualify for the low-income subsidies available under Part D, we are concerned that there may not be sufficient independent charity PAPs available before the January 1, 2006 start date of the Part D program to accommodate beneficiaries of limited means who may need an alternative PAP arrangement. We recognize the importance of not unnecessarily burdening or alarming beneficiaries. We believe that manufacturers will play an important role in ensuring an effective transition.

With respect to pharmaceutical manufacturer PAPs that are in existence prior to the date of publication of this Special Advisory Bulletin, during the initial calendar year of the Part D benefit, OIG will take into consideration in exercising its enforcement discretion with respect to administrative sanctions arising under the anti-kickback statute whether the PAP is taking prompt, reasonable, verifiable, and meaningful steps to transition patients who enroll in Part D to alternative assistance models, such as independent charities.

In addition to taking steps to transition beneficiaries to other programs, pharmaceutical manufacturer PAPs can reduce their fraud and abuse exposure by taking one or more of the following steps: (i) Adjusting financial need criteria to reflect the lower drug costs incurred by Part D enrollees (*i.e.*, liability for premiums and cost-sharing amounts only, instead of the total cost of the drugs); (ii) where possible, subsidizing other drugs in the same class as the manufacturer's products covered by the PAP if a beneficiary's physician prescribes an alternate product; and (iii) checking CMS eligibility files, to the extent available, on a reasonably regular basis to determine whether PAP patients have enrolled in Part D and should be transitioned to other assistance programs. Occasional, inadvertent cost-sharing subsidies provided to a Part D enrollee should not be problematic (*e.g.*, where, despite due diligence, a pharmaceutical manufacturer PAP does not know and should not have known that a beneficiary has enrolled in Medicare Part D). Notwithstanding a pharmaceutical manufacturer's compliance with the foregoing, the Government will take enforcement action in cases where there is evidence of unlawful intent.

The potential variability of PAPs, the fact that the Part D program is not yet operational, and the fact that it is not possible to predict all future or potential fraud and abuse schemes with certainty, make it difficult to provide comprehensive general guidance on the application of the anti-kickback statute to PAPs for Part D enrollees at this time. We intend to monitor the situation closely and may issue further guidance, if needed. Nothing in this Bulletin should be construed as precluding any form of lawful assistance not described in this Bulletin.

VI. OIG Advisory Opinion Process

OIG has an advisory opinion process that is available to individuals and entities, including pharmaceutical manufacturers, that want assurance that they will not run afoul of the fraud and abuse laws.[22] OIG advisory opinions are written opinions that are legally binding on OIG, the Department, and the party that requests the opinion. To obtain an opinion, the requesting party must submit a detailed, written description of its existing or proposed business arrangement. The length of time that it takes for OIG to issue an opinion varies based upon a number of factors, including the complexity of the arrangement, the completeness of the submission, and how promptly the requestor responds to requests for additional information. Further information about the process, including frequently asked questions, can be found on the OIG Web page at *http://oig.hhs.gov/fraud/advisoryopinions.html*.

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse, and waste in the Department's programs and to promote efficiency and economy in departmental operations. OIG carries out this mission through a nationwide program of audits, investigations, and inspections. The Health Care Fraud and Abuse Control Program, established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), authorized OIG to provide guidance to the health care industry to prevent fraud and abuse and to promote the highest level of ethical and lawful conduct. To further these goals, OIG issues Special Advisory Bulletins about industry practices or arrangements that potentially implicate the fraud and abuse authorities subject to enforcement by OIG.

Daniel R. Levinson,

Inspector General.

[FR Doc. 05–23038 Filed 11–21–05; 8:45 am]

BILLING CODE 4150–04–P

[22] Section 1128D(b) of the Act; 42 CFR part 1008.

DEPARTMENT OF HOMELAND SECURITY

[DHS–2005–0054]

Office of State and Local Government Coordination and Preparedness; SAFER Grant Program

AGENCY: Office of State and Local Government Coordination and Preparedness, DHS.

ACTION: Notice and request for comment.

SUMMARY: Pursuant to the Paperwork Reduction Act, the Department of Homeland Security (DHS) solicited comments on the proposed collection of information in connection with the Staffing for Adequate Fire and Emergency (SAFER) Grant Application.

This notice extends the comment period by 30 days.

DATES: Comments are encouraged and will be accepted until December 22, 2005. This process is conducted in accordance with 5 CFR 1320.10

ADDRESSES: You may submit comments, identified by docket number DHS–2005–0054, by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *tom.harrington@dhs.gov*. Include docket number DHS–2005–0054 in the subject line of the message.
- Mail: Office of State and Local Government Coordination and Preparedness, Grants Program Office, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Tom Harrington 202–786–9791 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: DHS, as part of its continuing effort to reduce paperwork and respondents' burden, invites the general public to take this opportunity to comment on this proposed information collection as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the Office of State and Local Government Coordination and Preparedness (OSLGCP) is soliciting comments concerning a proposed new collection, the SAFER Grant Application. The information collection was previously published in the **Federal Register** on August 16, 2005 at 70 FR 48170 allowing for OMB review and a 60-day public comment period. No comments were received. The purpose of this notice is to allow an additional 30-days for public comments.

Description: The SAFER Act 15 U.S.C.229(a) provides for $65 million in grant funding to be distributed directly to individual fire departments on a competitive basis. The law allows DHS to fund fire department staff and benefits on a decreasing cumulative value over the span of five years. The information collected through the program's application is the minimum necessary to evaluate grant applications authorized under the SAFER Grant Program or is necessary for DHS to comply with mandates delineated in the law.

Public Participation: Interested persons are invited to participate in this Information Collection Request by submitting written data, views, or arguments on all aspects of the proposed Information Collection Request. OSLGCP also invites comments that relate to the economic, environmental, or federalism affects that might result from this Information Collection Request. Comments that will provide the most assistance to the OSLGCP in developing these procedures will reference a specific portion of the Information Collection Request, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number DHS–2005–0054 for this Information Collection Request. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

Analysis:

Agency: Department of Homeland Security, Office of State and Local Government Coordination and Preparedness.

Title: Staffing for Adequate Fire and Emergency Response (SAFER) Grant Application.

OMB Control Number: NEW.

Frequency: Quarterly.

Affected Public: State, local or tribal government.

Estimated Number of Respondents: 7,000.

Estimated Time per Response: 17 hours per response.

Total Burden Hours: 149,000.

Total Cost Burden: None.

Dated: November 14, 2005.

Scott Charbo,

Chief Information Officer.

[FR Doc. 05–23047 Filed 11–21–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Triennial Status Report and Status Report Fee: General Notice

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of due date for Status Report and Fee.

SUMMARY: This is to advise Customs brokers that the Triennial Status Report Fee of $100 that is assessed for each license held by a broker whether it may be an individual, partnership, association or corporation, is due during the month of February 2006 along with the corresponding status report.

DATES: Due date for payment of the fee and status report: February 28, 2006.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Broker Management Branch, (202) 344–2717.

SUPPLEMENTARY INFORMATION: In accordance with 19 U.S.C. 1641(g) and 19 CFR 111.30(d), each broker must file a written status report and pay the corresponding fee of $100 every three years. The report is due every three years regardless of the date the license was issued to the broker. The last status report and fee were due during the month of February 2003. Reports and fees must be filed during the month of February 2006, and be addressed to the director of the port that originally delivered the license to the broker. No reports or fees should be submitted directly to Customs and Border Protection Headquarters.

The elements that must be included in the report are prescribed in 19 CFR 111.30(d). While no particular format is required, a model report may be obtained from your local Customs and Border Protection port office.

Dated: November 15, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–23061 Filed 11–21–05; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement Bureau

[File No. 1653–0029]

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review; immigration user fee.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE) submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 23, 2006.

Written comments and suggestions from the public and affected agencies

concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Immigration User Fee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–1653–0029). U.S. ICE.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Businesses or other for profit: The information requested from commercial air carriers, commercial vessel operators, and tour operators is necessary for effective budgeting, financial management, monitoring, and auditing of user fee collections. No forms are required. Only data readily available from accounting records, necessary, to conduct daily business are required.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25 responses at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 331 hours this includes 250 annual record keeping hours plus 81 annual reporting burden hours.

If you have comments, suggestions, or need a copy of the information collection, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377; or Jonathon Cykman, USICE, Director, IT Policy and Planning, 801 I Street, NW., Suite 760, Washington, DC 20001, (202) 732–2048.

Dated: November 17, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–23058 Filed 11–21–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension Agency Information Collection Activity Under OMB Review: Federal Flight Deck Officer (FFDO) Program

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on August 23, 2005, 70 FR 43902.

DATES: Send your comments by December 22, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Federal Flight Deck Officer (FFDO) Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0011.

Forms(s): FFDO online application.

Affected Public: Applicants to the FFDO Program and current FFDOs.

Abstract: To further supplement the security measures being implemented by TSA, Congress and the President enacted the Arming Pilots Against Terrorism Act (APATA) as Title XIV of the Homeland Security Act (Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2300), codified at 49 U.S.C. 44921. APATA required TSA to establish a program to screen, select, train, deputize, equip, and supervise qualified volunteer pilots of passenger aircraft. With the enactment of the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176, Dec. 12, 2003, 117 Stat. 2490, 2561), the program was expanded to include pilots of cargo aircraft, as well as flight engineers and navigators on both passenger and cargo aircraft. These individuals, known as Federal Flight Deck Officers (FFDOs), are authorized to transport and carry a firearm and to use force, including deadly force, to defend the flight deck of an aircraft against acts of criminal violence or air piracy. Information collected as the result of this renewal request would be used to assess the qualifications and suitability of prospective and current FFDOs through an online application, to ensure the readiness of every FFDO, to administer the program, and for security purposes.

Number of Respondents: Up to 13,780 annually.

Estimated Annual Burden Hours: An estimated 13,780 hours annually. The burden estimate stated in the August 23, 2005 notice did not account for the total reporting burden, and thus has been revised here.

Issued in Arlington, Virginia, on November 15, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–23043 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Monthly Report Naturalization Papers; Form N–4.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 23, 2005.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to (202) 272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0051 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–4; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State or local Governments. Section 339 of the Immigration and Nationality Act (Act) requires that the clerk of each court that administers the oath of allegiance notify the U.S. Citizenship and Immigration Service (USCIS) of all persons to whom the oath of allegiance for naturalization is administered, within 30 days after the close of the month in which the oath was administered. This form provides a format for submitting a list of those persons to USCIS and provides accountability for the delivery of the certificates of naturalization as required under that section of law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 160 respondents at 12 responses annually at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: November 17, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–23059 Filed 11–21–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; USCIS Case Status Service Online.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 23, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0080 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* USCIS Case Status Service Online.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form No. (File No. OMB–33). U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This system allows individuals or their representatives to request case status of their pending application through the USCIS website.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 24,000,000 respondents at 2.75 minutes (.046) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,104,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: November 17, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–23060 Filed 11–21–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Document Reassessing Methods To Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear (Ursus arctos horribilis) Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability; request for comments.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of the draft document Reassessing Methods to Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear. Once comments are received, analyzed, and addressed, the final revised population methodology will be appended to the Grizzly Bear Recovery Plan and the Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area. The Service solicits review and comment from the public on this draft information prior to appending it to the Grizzly Bear Recovery Plan.

DATES: Comments on the draft document Reassessing Methods to Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear must be received on or before February 21, 2006 to ensure that they will be received in time for our consideration prior to finalization of the revised methodology.

ADDRESSES: Written comments and materials regarding this information should be sent to the Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Document Availability

Persons wishing to review this document may obtain a copy by contacting the Grizzly Bear Recovery Coordinator, at the above address, contacting the above official by telephone, or by viewing it online at *http://mountain-prairie.fws.gov/species/mammals/grizzly/yellowstone.htm.* You also may make an appointment to view the documents at the above address during normal business hours.

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species; establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. Under the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Service approved the revised Grizzly Bear Recovery Plan on September 10, 1993.

In 1994, The Fund for Animals, Inc., and 42 other organizations and individuals filed suit over the adequacy of the 1993 Recovery Plan (*Fund for Animals* v. *Babbitt*, 903 F. Supp. 96 (D. D.C. 1995); 967 F. Supp. 6 (D. D.C. 1997). In 1995, the U.S. District Court for the District of Columbia issued an order which remanded for further study and clarification four issues that are relevant to the Yellowstone grizzly bear population, including—(1) The methods used to measure the status of bear populations; (2) the impacts of genetic isolation; (3) how mortalities related to livestock are monitored; and (4) the monitoring of disease. The Service also agreed to append habitat-based recovery criteria to the Recovery Plan prior to any delisting action. All of these issues, except the draft revised methodology for calculating total population size and establishing sustainable mortality limits for the Yellowstone grizzly bear population, have been addressed prior to publication of this Notice and were made available for public review and comment previously (62 FR 19777, April 23, 1997; 62 FR 47677, September 10, 1997; 64 FR 38464, July 16, 1999; 64 FR 38465, July 16, 1999).

As recommended by Grizzly Bear Recovery Plan Task Y11 and as per the Court Opinion, the Service has worked to ''determine population conditions at which the species is viable and self sustaining'' and ''reevaluate and refine population criteria as new information becomes available'' for the Yellowstone population of grizzly bears (Service 1993 p. 44). At the request of the Service beginning in 2000, the Interagency Grizzly Bear Study Team (IGBST), led by the U.S. Geological Survey in cooperation with various University specialists, began a comprehensive evaluation of the demographic data and the methodology used to estimate population size and establish the sustainable level of mortality for grizzly bears in the Yellowstone Ecosystem. Accordingly, the IGBST (2005) produced a critical review of the current methods for estimating population size and calculating the sustainable mortality levels for the Yellowstone grizzly population. This product is a report compiled by the IGBST that evaluates current methods, reviews recent scientific literature, examines alternative methods, and recommends the most valid technique based on the best available science (IGBST 2005). The end result of this review is the draft document Reassessing Methods to Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear.

The method for calculating population size using females with cubs sightings (Keating *et al.* 2002) and the method for calculating the unknown and unreported mortalities (Cherry *et al.* 2002) have been published in peer-reviewed scientific journals. We are seeking comments only on the document Reassessing Methods to Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear, which applies these peer-reviewed methods to the Yellowstone grizzly bear population.

Based on the comments received, the Service will finalize this methodology for calculating total population size and establishing sustainable mortality limits for the Yellowstone grizzly bear population and append it to the Grizzly Bear Recovery Plan prior to publishing a final rule to designate the Greater Yellowstone Ecosystem population of grizzly bears as a distinct population segment and to remove the Yellowstone distinct population segment of grizzly bears from the Federal list of endangered and threatened wildlife.

Public Comments Solicited

Section 4(f) of the Endangered Species Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal management agencies also will take these comments into account in the course of implementing approved recovery plans. We now seek public comment on the draft document Reassessing Methods to Estimate Population Size and Sustainable Mortality Limits for the Yellowstone Grizzly Bear to address both Task Y11 in the Grizzly Bear Recovery Plan and the Court Opinion (*Fund for Animals* v. *Babbitt*, 903 F. Supp. 96 (D. D.C. 1995); 967 F. Supp. 6 (D. D.C. 1997)). All comments received by the date specified in the **DATES** section above will be considered prior to finalization of the information. Appropriate portions of the information will be appended to, and become part of, the 1993 Grizzly Bear Recovery Plan and the Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area.

Literature Cited

Cherry, S., M.A. Haroldson, J. Robison-Cox, and C.C. Schwartz. 2002. Estimating total human-caused mortality from reported mortality using data from radio-instrumented grizzly bears. Ursus 13:175–184.

Keating, K.A., C.C. Schwartz, M.A. Haroldson, and D. Moody. 2002. Estimating numbers of females with cubs-of-the-year in the Yellowstone grizzly bear population. Ursus 13:161–174.

Authority: The authority for this Notice is under section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 11, 2005.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 05–23057 Filed 11–21–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Proposed Outer Continental Shelf Oil and Gas Lease Sale 200 in the Western Gulf of Mexico (2006)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, that MMS intends to prepare an environmental assessment (EA) for proposed Outer Continental Shelf (OCS) oil and gas Lease Sale 200 in the Western Gulf of Mexico (GOM) (Lease Sale 200) scheduled for August 2006. The MMS is issuing this notice to facilitate public involvement. The preparation of this EA is an important step in the decision process for Lease Sale 200. The proposal and alternatives for Lease Sale 200 were identified by the MMS Director in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007; Central Planning Area Sales 185, 190, 194, 198, and 201; Western Planning Area Sales 187, 192, 196, and 200—Final Environmental Impact Statement; Volumes I and II (Multisale EIS, OCS EIS/EA MMS 2002–052). This EA will reexamine the potential environmental effects of the proposed action (the offering of all available unleased acreage in the Western Planning Area (WPA)) and its alternatives (the proposed action excluding the unleased blocks near biologically sensitive topographic features; and no action) based on any new information regarding potential impacts and issues that were not available at the time the Multisale EIS was prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394. You may also contact Mr. Chew by telephone at (504) 736–2793.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Multisale EIS that addressed nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the nine Central Planning Area (CPA) and WPA lease sales scheduled in the OCS Oil and Gas Leasing Program: 2002–2007 (5-Year Program, OCS EIS/EA MMS 2002–006). Under the current 5-Year Program, five annual areawide lease sales were scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales were scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Multisale EIS; a separate EA was prepared for that proposal. The Multisale EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Multisale EIS addresses nine proposed lease sales, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187 based on the EIS. For the subsequent sales, an additional NEPA review (an EA) will be conducted the year prior to each proposed lease sale, to address any new information relevant to that proposed action. After completion of the EA, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a Supplemental EIS. The MMS will then prepare and send Consistency Determinations (CD's) to the affected States to determine whether the lease sale is consistent with their federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the Proposed Notice of Sale (PNOS) from the governors of the affected States on the size, timing, and location of the lease sale. The tentative schedule for the prelease decision process for Lease Sale

200 is as follows: EA/FONNSI or Supplemental EIS decision, March 2006; CD's sent to affected States, March 2006; PNOS sent to governors of the affected States, March 2006; Final Notice of Sale published in the **Federal Register**, July 2006; and Lease Sale 200, August 2006.

Public Comments

Interested parties are requested to send within 30 days of this Notice's publication comments regarding any new information or issues that should be addressed in the EA. Comments may be submitted in one of the following three ways:

1. Electronically using MMS's new Public Connect on-line commenting system at *https://ocsconnect.mms.gov*. This is the preferred method for commenting. From the Public Connect ''Welcome'' screen, search for ''WPA Lease Sale 200 EA'' or select it from the ''Projects Open for Comment'' menu.

2. In written form enclosed in an envelope labeled ''Comments on WPA Lease Sale 200 EA'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

3. Electronically to the MMS e-mail address: *environment@mms.gov*.

To obtain single copies of the Multisale EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the Multisale EIS or check the list of libraries that have copies of the Multisale EIS on the MMS Web site at *http://www.gomr.mms.gov*.

Dated: October 24, 2005.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 05–23073 Filed 11–21–05; 8:45 am]

BILLING CODE 4310–MP–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf (OCS), Central Planning Area, Oil and Gas Lease Sale 198 (2006) Environmental Assessment

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: The MMS is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, that MMS has prepared an environmental assessment (EA) for proposed OCS oil and gas Lease Sale 198 in the Central Gulf of Mexico (GOM) (Lease Sale 198) scheduled for March 2006. Proposed Lease Sale 198 is the fourth Central Planning Area (CPA) lease sale scheduled in the Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007 (5-Year Program, OCS EIS/EA MMS 2002–006). The preparation of this EA is an important step in the decisionmaking process for Lease Sale 198. The proposal for Lease Sale 198 (the offering of all available unleased acreage in the CPA) and its alternatives (the proposed action excluding the unleased blocks near biologically sensitive topographic features, the proposed action excluding the unleased blocks within 15 miles of the Baldwin County, Alabama, Coast, and no action) were identified by the MMS Director in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007; Central Planning Area Sales 185, 190, 194, 198, and 201; Western Planning Area Sales 187, 192, 196, and 200—Final Environmental Impact Statement; Volumes I and II (Multisale EIS, OCS EIS/EA MMS 2002–052). The Multisale EIS analyzed the effects of a typical CPA lease sale by presenting a set of ranges for resource estimates, projected exploration and development activities, and impact-producing factors for any of the proposed CPA lease sales. The level of activities projected for proposed Lease Sale 198 falls within these ranges. In this EA, which tiers from the Multisale EIS and incorporates that document by reference, MMS reexamined the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Multisale EIS was prepared. No new significant impacts were identified for proposed Lease Sale 198 that were not already assessed in the Multisale EIS. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact (FONNSI).

FOR FURTHER INFORMATION CONTACT: Mr. James F. Bennett, Minerals Management Service, Minerals Management Service, Headquarters Office, Attention: Environmental Division, Environmental Assessment Branch (MS 4042), Parkway Atrium Building, 381 Elden Street, Herndon, Virginia 20170–4817. You may also contact Mr. Bennett by telephone at (703) 787–1660.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Multisale EIS that addressed nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for 9 of the 10 CPA and Western Planning Area (WPA) lease sales scheduled in the 5-Year Program. Under the 5-Year Program, five annual areawide lease sales are scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales are scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Multisale EIS; a separate EA was prepared for that proposal. The Multisale EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Multisale EIS addresses nine proposed lease sales, at the completion of the EIS process, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187. In the year prior to each subsequent proposed lease sale, an additional NEPA review (an EA) will be conducted to address any new information relevant to that proposed action. After completion of the EA, MMS will determine whether to prepare a FONNSI or a Supplemental EIS. The MMS will then prepare and send Consistency Determinations (CD's) to the affected States to determine whether the proposed lease sale is consistent with their federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the proposed Notice of Sale (NOS) from the governors of the affected States on the size, timing, and location of the proposed lease sale. The tentative schedule for the prelease decision process for Lease Sale 198 is as follows: CD's sent to affected States, upon publication in the **Federal Register** of the NOA; proposed NOS sent to governors of the affected States, upon publication in the **Federal Register** of the NOA; Final Notice of Sale published in the **Federal Register**,

February 2006; and Lease Sale 198, March 2006. To obtain single copies of the Multisale EIS, you may contact the MMS, Minerals Management Service, Attention: Environmental Division, Environmental Assessment Branch (MS 4042), 381 Elden Street, Herndon, Virginia 20170–4817. You may also view the Multisale EIS or check the list of libraries that have copies of the Multisale EIS on the MMS Web site at *http://www.gomr.mms.gov.*

Public Comments

Interested parties are requested to send comments on this EA/FONNSI within 30 days of this Notice's publication. Comments may be submitted in written form enclosed in an envelope labeled ''Comments on CPA Lease Sale 198 EA'' and mailed (or hand carried) to the MMS, Minerals Management Service, Attention: Environmental Division, Environmental Assessment Branch (MS 4042), 381 Elden Street, Herndon, Virginia 20170–4817.

All comments received will be considered in the decisionmaking process for Lease Sale 198.

EA Availability

To obtain a copy of this EA, you may contact the Minerals Management Service, Attention: Environmental Division, Environmental Assessment Branch (MS 4042), 381 Elden Street, Herndon, Virginia 20170–4817. You may also view this EA on the MMS Web site at *http://www.gomr.mms.gov.*

Dated: October 31, 2005.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 05–23074 Filed 11–21–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 198 in the Central Gulf of Mexico (GOM)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the Proposed Notice of Sale for Proposed Sale 198.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 198 in the Central GOM OCS. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 198 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 15, 2006.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 198 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: November 10, 2005.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 05–23075 Filed 11–21–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee (Committee) will meet on December 7, 2005. The agenda for the Committee meeting will include discussions with State and Federal agency representatives on the CALFED Bay-Delta Program refocusing efforts underway and the 10-Year Action Plan, and a final recommendation to the Secretary on the Annual Statement of Progress and Balance and Annual Report.

DATES: The meeting will be held on Wednesday, December 7, 2005, from 9 a.m. to 5 p.m. If reasonable accommodation is needed due to a disability, please contact Colleen Kirtlan at (916) 445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: These meetings will be held at the John E. Moss Federal Building located at 650 Capitol Mall, 5th Floor, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Keith Coolidge, California Bay-Delta Authority, at 916–445–0092, or Diane Buzzard, U.S. Bureau of Reclamation, at 916–979–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice and recommendations to the Secretary of the Interior on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee agendas and meeting materials will be available prior to all meetings on the California Bay-Delta Authority Web site at *http://calwater.ca.gov* and at the meetings. These meetings are open to the public. Oral comments will be accepted from members of the public at each meeting and will be limited to 3–5 minutes.

(**Authority:** The Committee was established pursuant to the Department of the Interior's authority to implement the Water Supply, Reliability, and Environmental Improvement Act, P.L. 108–361; the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et. seq.*; the Endangered Species Act, 16 U.S.C. 1531 *et. seq.;* and the Reclamation Act of 1902, 43 U.S.C. 391 *et. seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, 34 U.S.C. 3401.)

Dated: November 4, 2005.

Allan Oto,

Special Projects Officer, Mid-Pacific Region, U.S. Bureau of Reclamation.

[FR Doc. 05–23051 Filed 11–21–05; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–464 (Second Review)]

Sparklers From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on June 1, 2005 (70 FR 31537) and determined on September 7, 2005 that it would conduct an expedited review (70 FR 55164, September 20, 2005).

The Commission transmitted its determination in this review to the Secretary of Commerce on November 15, 2005. The views of the Commission are contained in USITC Publication 3814 (November 2005), entitled *Sparklers from China: Investigation No. 731–TA–464 (Second Review).*

By order of the Commission.

Issued: November 16, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–23014 Filed 11–21–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: November 30, 2005 from 10 a.m. to 11 a.m.

ADDRESSES: National Archives and Records Administration Building, Archivist's Board Room (Room 119), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard H. Hunt, Director; Center for Legislative Archives; (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Advisory Committee on the Records of Congress Fourth Report Symposium on Presidential and Public Papers at the John Brademas Center for the Study of Congress

Activities Report of the Center for Legislative Archives

Other current issues and new business

The meeting is open to the public.

This notice is published less than 15 calendar days before the meeting because of scheduling difficulties.

Dated: November 18, 2005.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 05–23205 Filed 11–21–05; 8:45 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 2, 2005.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Literature, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

2. *Date:* December 6, 2005.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Visual Arts and Architecture, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

3. *Date:* December 6, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Grants for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 14, 2005 deadline.

4. *Date:* December 8, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Grants for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 14, 2005 deadline.

5. *Date:* December 9, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Grants for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 14, 2005 deadline.

6. *Date:* December 12, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Grants for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 14, 2005 deadline.

7. *Date:* December 12, 2005.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2005 deadline.

8. *Date:* December 13, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Grants for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 14, 2005 deadline.

9. *Date:* December 15, 2005.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowship Programs at Independent Research Institutions, submitted to the Division of Research Programs at the September 1, 2005 deadline.

10. *Date:* December 16, 2005.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2005 deadline.

Michael McDonald,
Advisory Committee Management Officer.

[FR Doc. 05–23104 Filed 11–21–05; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, November 29, 2005.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington DC 20594.

STATUS: The two items are open to the public

MATTERS TO BE CONSIDERED:

7710A Railroad Accident Report—Collision of Norfolk Southern Freight Train 192 with Standing Norfolk Southern Local Train P22 with Subsequent Hazardous Materials Release at Graniteville, South Carolina, January 6, 2005.

7505A Safety Study—Supervisory Control and Data Acquisition (SCADA) in Liquid Pipelines

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Christopher Bisett (202) 314–6305 by Friday, November 25, 2005.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314—6410.

Dated: November 15, 2005.

Vicky D'Onofrio,
Federal Register Liaison Officer.

[FR Doc. 05–23212 Filed 11–18–05; 2:37 pm]

BILLING CODE 7533—01—M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric; Notice of Issuance of Amendment to Materials License SNM–2509

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance of Amendment to Materials License SNM–2509.

EFFECTIVE DATE: December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; Fax number: (301) 415–1179; E-mail: *cmr1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 5 to Materials License No. SNM–2509 held by Portland General Electric Company (PGE) to delete from Technical Specification (TS) section 5.5.2, ''Radioactive Effluent Control Program,'' the sentence from TS 5.5.2.b. that reads, ''The Trojan ISFSI may be included in the environmental monitoring program for the Trojan Nuclear Plant,'' and TS 5.5.2.c. in its entirety, which requires an annual report to be submitted pursuant to 10 CFR 72.44(d)(3). Approval of these changes to the TS in conjunction with an exemption request approved on November 9, 2005, relieves PGE from the requirement to submit an annual radioactive effluent report for the Trojan Independent Spent Fuel Storage Installation (ISFSI), located in Columbia County, Oregon.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. This amendment satisfied the criteria specified in 10 CFR 51.22(c)(10)(ii) and 10 CFR 51.22(c)(11) for a categorical exclusion from the requirements to perform an environmental assessment or to prepare an environmental impact statement.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

Further Information

The NRC has prepared a Safety Evaluation Report (SER) that documents the information that was reviewed and NRC's conclusion. In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action, including the amendment request dated July 6, 2005, and the SER are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of November, 2005.

For the Nuclear Regulatory Commission.

Christopher M. Regan,
Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–6415 Filed 11–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–146, License No. DPR–4]

Saxton Nuclear Experimental Corporation and GPU Nuclear, Inc.; Notice of Termination of Saxton Nuclear Experimental Corporation Facility Amended Facility License No. DPR–4

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Termination of the Saxton Nuclear Experimental Corporation (SNEC) and GPU Nuclear, Inc., SNEC Facility Amended Facility License No. DPR–4.

SUMMARY: The Nuclear Regulatory Commission (NRC) is noticing the termination of Amended Facility License No. DPR–4 (NRC Docket No. 50–146) for the SNEC facility near Saxton, Pennsylvania.

Background: The SNEC facility is in Bedford County, Pennsylvania. The SNEC facility operated from 1962 to 1972. It was mainly used for research in various aspects of power reactor technology and to train personnel. The reactor was licensed at 23.5 megawatts of thermal energy. Electric power was produced by sending steam produced by operation of the reactor to a nearby coal-fired power station (because the SNEC facility did not have its own turbine or generator). The nuclear steam supply system was a one-loop pressurized water reactor. After shutdown, the reactor fuel was removed from the facility and shipped to what is now the Department of Energy Savannah River Site in South Carolina. Some minor decommissioning activities were done from 1972 to 1974. The facility was then placed in a monitored storage condition. Support structures and buildings were decontaminated and removed between 1987 and 1992. Full-scale decommissioning activities started in May 1998.

In February 2000 the licensees submitted their license termination plan (LTP) for the SNEC facility. Under the provisions of 10 CFR 50.82(a)(10), the NRC approved the LTP by a license amendment dated March 28, 2003. In accordance with the approved LTP, the licensees conducted final status surveys (FSSs) to demonstrate that the facility and site met the criteria in 10 CFR 20.1402 for unrestricted release. The licensees presented the FSS results to the NRC in FSS reports (FSSRs).

The licensees submitted an application for termination of SNEC Amended Facility License No. DPR–4 on September 15, 2005. The application states that GPU Nuclear, Inc., has completed the remaining radiological decommissioning activities and the final radiation surveys of the SNEC Facility and the associated PENELEC site in accordance with an NRC-approved LTP and the final radiation surveys demonstrate that the facility and site area meet the criteria in 10 CFR part 20, subpart E, for the decommissioning and release of the site for unrestricted use.

The NRC did a number of performance-based in-process inspections of the licensee's FSS program during the decommissioning process. The purpose of the inspections was to verify that the FSSs were being done in accordance with the licensees' commitments in the LTP and to evaluate the quality of the FSSs by reviewing the FSS procedures, methodology, equipment, surveyor training and qualifications, document quality control, and survey data. The NRC also did independent confirmatory surveys to verify the licensees' FSS results. The confirmatory surveys consisted of surface scans for beta and gamma radiation, direct measurements for total beta activity, and smear sampling for determining removable-radioactivity levels.

The NRC staff reviewed the FSSRs and concludes that (i) dismantlement and decontamination activities were performed in accordance with the approved LTP; and (ii) the FSSRs demonstrate that the facility and site have met the criteria for decommissioning in 10 CFR part 20, subpart E. NRC is therefore terminating SNEC Facility Amended Facility License No. DPR–4.

FOR FURTHER INFORMATION CONTACT: See the application for license termination dated September 15, 2005 (ML052640047) and NRC Inspection Report Nos. 50–146/2003–201, dated November 12, 2003 (ML033090608), 50–146/2003–202, dated December 17, 2003 (ML033420687), 50–146/2004–201, dated February 10, 2005 (ML050380407), and 50–146/2005–201, dated October 31, 2005 (ML052730465). They are available for public inspection at the Commission's Public Document Room (PDR) at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS's) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* (use the ADAMS ML numbers given above). Persons who do not have access to ADAMS or who have trouble accessing the documents 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 7th day of November 2005.

For The Nuclear Regulatory Commission.

Brian E. Thomas,

Branch Chief, Research and Test Reactors Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E5–6414 Filed 11–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on December 7–10, 2005, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 24, 2004 (69 FR 68412).

Wednesday, December 7, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

1 p.m.–1:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.–3 p.m.: Final Review of the Vermont Yankee Extended Power Uprate Application and the Associated Safety Evaluation (Open)—The Committee will hear presentations by and hold discussions with representatives of the Entergy Nuclear Operations, Inc. and the NRC staff regarding the 20% power uprate application for the Vermont Yankee Nuclear Plant and the NRC staff's associated Safety Evaluation.

3:30 p.m.–5:30 p.m.: Draft ACRS report on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS report to the Commission on the NRC Safety Research Program.

5:45 p.m.–6:45 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss the topics scheduled for discussion with the NRC Commissioners between 1 and 3 p.m. on Thursday, December 8, 2005.

Thursday, December 8, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Early Site Permit Application for the Grand Gulf Nuclear Station and the Associated Final Safety Evaluation Report (Open)—The Committee will hear presentations by and hold discussions with representatives of the System Energy Resources, Inc. and the NRC staff regarding the early site permit application for the Grand Gulf Nuclear Station and the associated final Safety Evaluation Report prepared by the NRC staff.

10:15 a.m.–11:45 a.m.: Draft Final Generic Letter, ''Impact of Potentially Degraded Hemyc/MT Fire Barrier Materials on Compliance with Fire Protection Regulations'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final Generic Letter on ''Impact of Potentially Degraded Hemyc/MT Fire Barrier Materials on Compliance with Fire Protection Regulations'' and a summary of the NRC staff's resolution of public comments received on the public comment version of this Generic Letter.

1 p.m.–3 p.m.: Meeting with the NRC Commissioners, Commissioners' Conference Room, One White Flint North, Rockville, MD (Open)—The Committee will meet with the NRC Commissioners to discuss the following topics: Overview by the ACRS Chairman (License Renewal, Early Site Permits, and Future ACRS Activities); Issues Related to New Plant Licensing (including Technology Neutral Framework); Proposed Alternative Embrittlement Criteria in 10 CFR 50.46; Fire Protection Matters; and Power Uprate Technical Issues.

3:30 p.m.–5 p.m.: Proposed Program Plan and Advance Notice of Proposed Rulemaking for Risk-Informing 10 CFR Part 50 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Program Plan and the Advance Notice of Proposed Rulemaking for Risk-Informing 10 CFR Part 50, and related matters.

5:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday December 9, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Staff Activities Associated with Responding to the Commission's Staff Requirements Memorandum (SRM) Related to Safety Conscious Work Environment and Safety Culture (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff activities associated with responding to the Commission's SRM related to safety conscious work environment and safety culture, and related matters.

10:15 a.m.–11:15 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

11:15 a.m.–11:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

11:30 a.m.–12 Noon: Election of ACRS Officers for CY 2006 (Open)—The Committee will elect Chairman and Vice Chairman for the ACRS and Member-at-Large for the Planning and Procedures Subcommittee for CY 2006.

1:30 p.m.–3:30 p.m.: Draft ACRS Report on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS report to the Commission on the NRC Safety Research Program.

3:45 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, December 10, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 2005 (70 FR 56936). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this

service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACRS meeting dates for Calendar Year 2006 are provided below:

ACRS meeting No.	Meeting dates
	January 2006 (No Meeting).
529	February 9–11, 2006.
530	March 9–11, 2006.
531	April 6–8, 2006.
532	May 4–6, 2006.
533	May 31—June 1–2, 2006.
534	July 12–14, 2006.
	August 2006 (No Meeting).
535	September 7–9, 2006.
536	October 4–6, 2006.
537	November 1–3, 2006.
538	December 7–9, 2006.

Dated: November 16, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–6412 Filed 11–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 7, 2005, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 7, 2005, 10 a.m.–11:30 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: November 15, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–6413 Filed 11–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of November 21, 28, December 5, 12, 19, 26, 2005.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 21, 2005

Monday, November 21, 2005

9:25 a.m. Affirmation Session (Public Meeting)(Tentative).

a. U.S. Department of Energy (High Level Waste Repository: Pre-Applications Matters); NRC staff request for stay of LBP–05–27 (Tentative).

b. Louisiana Energy Services, L.P. (National Enrichment Facility). Remaining Claims in Petition for Review of LBP–05–13 (Environmental Contentions) (Tentative).

9:30 a.m. Briefing on Status of New Reactor Issues, Part 1 (Public Meeting). (Contact: Laura Dudes, 301–415–0146).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

1:30 p.m. Briefing on Status of New Reactor Issues, Part 2 (Public Meeting). (Contact: Laura Dudes, 301–415–0146).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of November 28, 2005—Tentative

Tuesday, November 29, 2005

9:30 a.m. Discussion of Management Issues (Closed–Ex. 2).

Wednesday, November 30, 2005

9:30 a.m. Briefing on EEO Program (Public Meeting). (Contact: Corenthis Kelley, 301–415–7380).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of December 5, 2005—Tentative

Thursday, December 8, 2005

1 p.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS). (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of December 12, 2005—Tentative

Monday, December 12, 2005

9 a.m. Discussion of Security Issues (Closed–Ex. 1).

Wednesday, December 14, 2005

1:30 p.m. Discussion of Security Issues (Closed–Ex. 1).

Thursday, December 15, 2005

1:30 p.m. Briefing on Threat Environment Assessment (Closed–Ex. 1).

Week of December 19, 2005—Tentative

There are no meetings scheduled for the Week of December 19, 2005.

Week of December 26, 2005—Tentative

There are no meetings scheduled for the Week of December 26, 2005.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: MIchelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at

aks@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: November 17, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–23145 Filed 11–18–05; 10:53 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 28, 2005, to November 9, 2005. The last biweekly notice was published on November 8, 2005 (70 FR 67744).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the

requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Beaver County, Pennsylvania

Date of amendment request: October 14, 2005.

Description of amendment request: The proposed changes would revise Technical Specifications (TSs) 3/4.8.2.3, ''D.C. [direct current] Distribution—Operating'' and 3/4.8.2.4, ''D.C. Distribution—Shutdown,'' to permit implementation of design changes associated with a battery charger upgrade.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Failure of the components associated with the proposed change (*i.e.*, battery chargers and Uninterruptible Power Supply [UPS] rectifiers) would not initiate any of the accidents described in the Updated Final Safety Analysis Report. No design function is being changed, and there is no adverse impact on the probability or consequences of accidents described in the safety analyses. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Failure modes associated with the rectifiers are reduced by the addition of battery chargers. A rectifier failure in the original design would result in a loss of battery charging and vital-bus load carrying functions. As a result of the modification, a dedicated battery charger will eliminate the battery charging design function loss upon failure of a rectifier. The failure mode for the new battery charger will be limited to a failure mode previously associated with the rectifiers. No new failure modes are associated with the new battery chargers.

No new failure modes are created by the proposed change; therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The modification does not reduce the margin of safety. Vital and DC bus support functions are unaffected. The system will still consist of rectifier and inverter units to provide AC power to the associated vital buses and units that charge the bus batteries and carry the associated DC bus loads. The only difference is that the Nos. 2–3 and 2–4 UPS unit rectifiers will no longer perform both of these functions. Separate battery charger units will charge the bus batteries and carry the DC loads. The new arrangement for DC buses 2–3 and 2–4 will match the existing arrangement of DC buses 2–1 and 2–2, insofar as the modification will result in all four instrument buses having separate UPS rectifier assemblies and battery charger devices. Dedicated bus 2–3 and 2–4 charges should increase system reliability.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Richard J. Laufer.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: August 31, 2005.

Description of amendment request: The amendment would revise the Technical Specifications (TS) to adopt NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.'' The proposed amendment includes changes to the TS definition of Leakage, TS 3.4.6.2, ''Reactor Coolant System, Operational Leakage,'' TS 3.4.5, ''Steam Generator (SG) Tube Integrity,'' and adds TS 6.8.k, ''Steam Generator (SG) Program,'' and TS 6.9.1.16, ''Steam Generator Tube Inspection Report.'' The proposed changes are necessary in order to implement the guidance for the industry initiative on NEI 97–06, ''Steam Generator Program Guidelines.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 2, 2005 (70 FR 10298), on possible amendments adopting TSTF–449, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 6, 2005 (70 FR 24126). The licensee affirmed the applicability of the following NSHC determination in its application dated August 31, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as a main steamline break (MSLB), rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (i.e., they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than [500 gallons per day or 720 gallons per day] in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG

Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Michael L. Marshall, Jr.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: May 20, 2004, as supplemented May 23 and September 30, 2005.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to support the implementation of 24-month fuel cycles at Clinton Power Station, Unit 1.

Date of issuance: October 24, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 169.

Facility Operating License No. NPF–62: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** July 6, 2004 (69 FR 40669). The supplements dated May 23 and September 30, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 2005.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 18, 2004, as supplemented May 13 and 25, June 14, August 17, and October 24 and 25, 2005.

Brief description of amendment: The amendment revised Technical Specification (TS) 4.3, ''Fuel Storage,'' to reflect the increased spent fuel storage capacity at Clinton Power Station, Unit 1.

Date of issuance: October 31, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 170.

Facility Operating License No. NPF–62: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** August 29, 2005 (70 FR 51093). In the supplement dated June 14, 2005, the licensee changed the use of the building crane and the temporary crane. This change may have impacted the staff''s original proposed no significant hazards consideration determination published on December 29, 2004 (69 FR 78051). Therefore a revised no significant hazards consideration determination was published on August 29, 2005. However, the supplements dated October 24 and 25, 2005, provided additional information that clarified the application, did not expand the scope of the application as noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269 and 50–270, Oconee Nuclear Station, Units 1 and 2, Oconee County, South Carolina

Date of application of amendments: August 18, 2005, as supplemented by letter dated September 15, 2005.

Brief description of amendments: The amendments revised the Technical Specifications 3.5.2.6 and 3.5.3.6 to accommodate the replacement of the reactor building emergency sump suction inlet trash racks and screens with strainers.

Date of issuance: November 1, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 348/350.

Renewed Facility Operating License Nos. DPR–38 and DPR–47: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 31, 2005 (70 FR 51852). The supplement dated September 15, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 1, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 4, 2004, as supplemented by letters dated March 8, May 25 and July 8, 2005.

Brief description of amendments: The amendment revises TS Section 3.4.9, ''Reactor Coolant System Pressure and Temperature (P/T) Limits.'' The changes revise the P/T limit curves for 54 effective full power years (EFPY) to support an additional 20 years of operation under the renewed license and resolve a non-conservative condition for TS 3.4.9, Figure 3.4.9–2, ''Non-Nuclear Heatup/Cooldown Curve,'' for Quad Cities Nuclear Power Station.

Date of issuance: October 17, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 217, 209, 228, 223.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 1, 2005 (70 FR 5244). The supplements dated March 8, May 25 and July 8, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 2005.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: January 27, 2005, as supplemented by letters dated August 12, September 9, and October 21, 2005.

Brief description of amendment: The amendment allows the licensee to utilize a probabilistic methodology to determine the contribution to main steamline break leakage rates for the once-through steam generator (OTSG) from the tube end crack (TEC) alternate repair criteria described in Improved Technical Specification (ITS) 5.6.2.10.2.f and also involves a change to ITS 5.6.2.10.2.f to incorporate the basis of the proposed probabilistic methodology and the method and technical justification for projecting the TEC leakage that may develop during the next operating cycle following the inservice inspection of each OTSG.

Date of issuance: October 31, 2005.

Effective date: October 31, 2005.

Amendment No.: 222.

Facility Operating License No. DPR–72: Amendment revises the Technical Specifications.

Date of notice in ***Federal Register:*** August 26, 2005 (70 FR 50424) and Repeat Notice dated September 27, 2005 (70 FR 56505). The August 26, 2005, Notice revised the previous notice dated March 15, 2005 (70 FR 12746). The licensee's supplement dated August 12, 2005, revised the proposed no significant hazards consideration determination and the licensee's supplements dated September 9, and October 21, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's proposed no significant hazards consideration determination as published August 26, 2005, in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2005.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 11, 2005, and its supplement dated August 25, 2005.

Brief description of amendments: The amendments allow use of the steam generator tube W* (W-star) alternate repair criteria for indications in the Westinghouse explosive tube expansion region on a permanent basis.

Date of issuance: October 28, 2005.

Effective date: As of the date of issuance, and shall be implemented prior to startup of Cycle 14.

Amendment Nos.: Unit 1–182; Unit 2–184.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 26, 2005 (70 FR 21462).

The August 25, 2005, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 2005.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: February 3, 2005.

Brief description of amendments: The amendments revised Technical Specification 3.6.3, ''Containment Isolation Valves,'' Surveillance Requirements 3.6.3.3 and 3.6.3.4 for Containment Isolation Valves and Blind Flanges (CIVs), by adding a provision to exempt CIVs that are locked, sealed, or otherwise secured from the position verification requirements.

Date of issuance: November 3, 2005.

Effective date: November 3, 2005, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2–201; Unit 3–192.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 1, 2005 (70 FR 9996).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 3, 2005.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 2, 2005.

Brief description of amendments: The amendments change Technical Specification (TS) 3.4.6.1, ''Reactor Coolant System Leakage Detection Systems,'' to specifically require only one containment radioactivity monitor (particulate channel) to be operable in Modes 1, 2, 3, and 4. Additionally, corresponding changes to the Surveillance Requirement (SR) 4.4.6.1 and 4.4.6.2.1, ''Reactor Coolant System Operational Leakage,'' were also made.

Date of issuance: October 17, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1–174; Unit 2–162.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 5, 2005 (70 FR 38722).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: March 1, 2005, as supplemented by letters dated June 16 and September 23, 2005.

Brief description of amendment: These amendments revise the frequency for the trip actuating device operational test (TADOT) of the P–4 interlock function. The proposed changes would revise the surveillance requirement frequency in Technical Specification 3.3.2 from ''once per reactor trip breaker cycle'' to ''18 months'' for North Anna, Units 1 and 2.

Date of issuance: October 24, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 244/225.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 26, 2005 (70 FR 21465).

The supplements dated June 16 and September 23, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 2005.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: July 14, 2005.

Brief description of amendment: These amendments correct two errors in the units of measure used to determine the Overtemperature δT Function Allowable Value.

Date of issuance: October 25, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 245/226.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 16, 2005 (70 FR 48208)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 2005.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 9th day of November, 2005.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 05–22795 Filed 11–21–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28064]

Filing Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 15, 2005.

Notice is hereby given that the following filing has 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-declaration for complete statements of the proposed transactions summarized below. The application-declaration and any amendments 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-declaration should submit their views in writing by December 12, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on Applicants at the addresses 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 fact 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 this matter. After December 12, 2005, the application-declaration, as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70–10074)

National Fuel Gas Company (''NFG''), a registered holding company, National Fuel Gas Distribution Corporation (''Distribution''), a public-utility subsidiary company of NFG, and NFG's nonutility subsidiary companies, National Fuel Gas Supply Corporation, Horizon Energy Development, Inc. and its subsidiaries, Highland Forest Resources, Inc. and its subsidiaries, Leidy Hub, Inc., Data-Track Account Services, Inc., Horizon LFG, Inc. and its subsidiaries, Horizon Power, Inc. and its subsidiaries, all at 6363 Main Street, Williamsville, New York 14221, Seneca Resources Corporation and its subsidiaries, at 1201 Louisiana Street, Suite 400 Houston, Texas 77002, and National Fuel Resources, Inc. at 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221 (Distribution and NFG's nonutility subsidiary companies are collectively referred to as, ''Subsidiaries''), have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(f), and 13 of the Act and rules 45 and 54 under the Act.

By order dated November 12, 2002 (HCAR No. 27600) (''Prior Order'') the Commission authorized NFG and its Subsidiaries to engage in financing and related transactions through December 31, 2005 (''Authorization Period''). Specifically, the Commission authorized: (i) NFG to increase equity and long-term debt capitalization in an aggregate amount of up to an additional $1.5 billion, excluding any common stock issued under NFG's shareholder rights plan, and to utilize the proceeds to make investments in its Subsidiaries, and for other corporate purposes; (ii) NFG to issue and sell from time to time up to $750 million principal amount of unsecured short-term debt securities such as commercial paper and notes issued under credit facilities; (iii) NFG and the Subsidiaries to enter into interest rate hedges with respect to outstanding indebtedness and to enter into certain anticipatory interest rate hedging transactions; (iv) NFG to guarantee securities of its Subsidiaries and provide other forms of credit support with respect to obligations of its Subsidiaries as may be necessary in the ordinary course of business in an aggregate amount not to exceed $2 billion outstanding at any one time; (v) NFG to continue to administer the NFG

system money pool (''Money Pool'') and invest surplus funds in the Money Pool and for the Subsidiaries to invest surplus funds and make borrowing from the Money Pool subject to certain limitations; (vi) NFG and the nonutility subsidiary companies to organize and acquire the securities of one or more entities (''Financing Subsidiary'') formed for the purpose of effecting financing transaction for NFG and its Subsidiaries and to guarantee the obligations of such Financing Subsidiaries; (vii) NFG and the Subsidiaries to change the terms of any majority-owned nonutility subsidiary authorized capitalization; and (viii) NFG to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interest in nonutility subsidiaries.

Under the Prior Order the Commission reserved jurisdiction over (i) the issuance of securities by NFG and are rated below investment grade, and (ii) the solicitation of shareholder approvals in connection with the adoption of any new stock-based plan or the extension or amendment of any existing stock-based plan.

NFG and its Subsidiaries are now requesting the Commission extend the Authorization Period from December 31, 2005 to and including February 8, 2006. NFG and its Subsidiaries (70–10074) are not requesting any other changes to the terms, conditions, and limitations imposed under the Prior Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6411 Filed 11–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52772; File No. SR–NSCC–2005–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Modify and Consolidate Clearing Fund Rules

November 14, 2005.

I. Introduction

On September 20, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2005–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on October 11, 2005.[2] On October 21, 2005, NSCC amended the proposed rule change.[3] The Commission received one comment letter in response to the proposed rule change.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

1. Clearing Fund Formula Enhancements

NSCC's clearing fund formula consists of a number of components designed to calculate NSCC's exposure to participants' unsettled portfolios. For CNS and Balance Order transactions, the clearing fund formula includes, among other components, a mark-to-market calculation and a volatility calculation.[5]

The current mark-to-market calculation includes trades that have not yet reached settlement date but excludes from the calculation trades that have reached T + 3 and CNS fail positions (*i.e.*, net positions that did not settle on settlement date). NSCC is enhancing the mark-to-market calculation to include trades that have reached settlement date and net CNS fail positions. This is intended to enable NSCC to more accurately cover its mark-to-market exposure to participants' unsettled portfolios in the event of an intraday insolvency of a participant. When making this calculation, NSCC may but is not required to take into account securities that a participant has delivered to CNS in the night cycle.[6]

The volatility component of the clearing fund formula rule provides that NSCC may exclude from volatility calculations net unsettled positions in classes of securities whose volatility is either less amenable to statistical analysis, such as OTC Pink Sheet issues trading below $5.00, or amenable to such analysis only in a complex manner, such as municipal or corporate bonds. The amount of clearing fund required to satisfy the volatility component for these positions is determined as a percentage haircut (currently 2% for municipal and corporate bonds).

NSCC is enhancing its volatility component and is replacing the 2% haircut for corporate and municipal bonds with a fixed income volatility calculation. NSCC will continue to use a haircut for fixed income securities in circumstances it deems appropriate, such as where sufficient market or security information is not available.

2. Technical Clarifications

When NSCC revised its clearing fund formula in 2001 to move to a risk-based calculation,[7] it applied the revised formula to participants on a rolling basis. To accommodate this transition, NSCC's rules retained two versions of Addendum B (Standards of Financial Responsibility and Operational Capability) and two versions of Procedure XV (Clearing Fund Formula and Other Matters). Version 1 of both Addendum B and Procedure XV was non-risk-based and Version 2 was risk-based. Version 2 is currently located in Appendix 1.

With limited exception, all participants are now subject to the clearing fund provisions of Version 2 of Procedure XV and Version 2 of Addendum B. Accordingly, in order to simplify the rules and enable participants to locate provisions applicable to them more readily, NSCC is restructuring its Addendums, Procedures, and Rules.

As Version 1 of Procedure XV now has limited applicability, NSCC is redesignating it as Version 2 of Procedure XV and moving it to Appendix 1. NSCC will retain only those provisions thereof (and of Version 1 of Addendum B[8]) that remain applicable. Because Version I of Procedure XV always contained a mark-to-market component, it is also being revised to include in the mark-to-market calculation trades that have reached T +

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 52552 (October 3, 2005), 70 FR 59112.

[3] The amendment was clarifying in nature and made no substantive changes to the proposed rule change as originally filed. Therefore, republication of notice is not required.

[4] Letter from Dennis A. Young, Vice President and Treasurer, Cosse International Securities, Inc. (November 1, 2005). The comment letter did not address the proposed rule change.

[5] The other components for CNS and Balance Order activity are a CNS fail charge, a charge for market maker domination, and special charges.

[6] The October 21, 2005, amendment clarified that while NSCC generally intends to take such deliveries into account when making this calculation, it will not do so if it would otherwise cause operational or administrative problems, and it reserves the right not to do so based upon the financial or operational condition of a particular participant at the time such calculation is made.

[7] Securities Exchange Act Release No. 44431 (June 15, 2001), 66 FR 33280.

[8] Both versions of Addendum B are substantially identical with the exception of certain provisions of current Version 1 relating to the timing for calculating and collecting clearing fund. The substance of those provisions of Version 1 of Addendum B are added as a note to Version 1 of Procedure XV that will be moved to Appendix 1 and will be renamed Version 2. The rest of Version 1 of Addendum B will be deleted. All participants remain subject to the provisions of Version 2 of Addendum B, which NSCC is moving to the body of its rules from Appendix 1 and redesignating Version 1.

3 and CNS fail positions. The provisions of Appendix 1 (Version 2 of Procedure XV and Version 2 of Addendum B) will be moved into the body of the rules in place of Version 1 of Procedure XV and Version 1 of Addendum B where they will appear in numerical order.

As part of these clarifications, Rule 4 (Clearing Fund) is also being corrected to make clear that participants may request a return of any excess clearing fund on any day that NSCC has determined that the participant's actual deposit exceeds its required deposit. Finally, certain technical corrections are being made to Rule 4 and to the clearing fund formula to provide consistent terminology and delete obsolete references.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[9] The Commission believes that NSCC's rule change is consistent with this Section because it will permit NSCC to better assure the safeguarding of funds and securities which are in its custody or control or for which it is responsible by allowing NSCC to more precisely identify the risks posed by a participant's unsettled portfolio and more quickly adjust and collect additional needed clearing fund collateral than it could using the old formula. As a result NSCC should be better protected from the risk associated with a participant's default because the clearing fund deposits it collects should more accurately reflect NSCC's exposure.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2005–13) be and hereby is approved.

[9] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6410 Filed 11–21–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52774; File No. SR–NSX–2005–07]

Self-Regulatory Organizations; National Stock Exchange; Order Approving Proposed Rule Change, and Amendment Nos. 1, 2, and 3, Thereto, Relating to the Creation of a Regulatory Oversight Committee

November 15, 2005.

I. Introduction

On August 1, 2005, the National Stock Exchange SM (''NSX'' SM or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a Regulatory Oversight Committee (''ROC''). Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 14, 2005.[3] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

NSX proposes to amend the text of Article VI, Section 1.1 of the Exchange's By-Laws to allow it to create, and specifically identify, a ROC that would be subject to the control and supervision of NSX's Board of Directors (''NSX Board''). The NSX also proposes to establish a Regulatory Oversight Committee Charter (''ROC Charter'') that would set forth the functions, scope of responsibilities and composition of the ROC.

NSX filed the proposed rule change in accordance with undertakings made by it and as set forth in Section III.F.1. of the Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 19(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions entered May 19, 2005.[4] In its filing, NSX represented that the ROC Charter would include provisions that mirror the terms of its undertaking to the Commission and certification procedures that are consistent with the certification procedures contained in the Order.[5]

Pursuant to the ROC Charter, the ROC shall be responsible for overseeing all of NSX's regulatory functions and responsibilities and to advise regularly NSX's Board about NSX's regulatory matters.[6] Specifically, the ROC shall: [7] (i) Oversee NSX's regulatory functions to enforce compliance with the federal securities laws and NSX rules, including monitoring the design, implementation, and effectiveness of NSX's regulatory programs; (ii) recommend to the NSX Board an adequate operating budget for NSX's regulatory functions; (iii) approve the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars; (iv) take any other action necessary to fulfill its oversight and advisory responsibilities; and (v) adopt policies and procedures to ensure the independence of NSX's Chief Regulatory Officer (the ''CRO''). The ROC shall also:

- Be authorized to retain, at NSX's expense, outside counsel and consultants as it deems appropriate to carry out its responsibilities; [8]
- On at least an annual basis, report to the NSX Board on the state of the Exchange's regulatory program; and [9]
- Create and maintain complete minutes of all of its meetings, and create and maintain records reflecting the ROC's recommendations or proposals made to NSX Board, and NSX Board's decision as to each such recommendation proposal.[10]

In the event that the ROC's recommended operating budget for NSX's regulatory functions either: (1) Is less than the previous year's budget by a material amount, (2) is rejected by the NSX Board, (3) is reduced by the NSX Board by a material amount, or (4) is altered by the NSX Board in a manner that, in the judgment of the ROC, materially impairs the ability of NSX to meet its regulatory obligations, then NSX shall, within fifteen (15) business

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52573 (October 7, 2005), 70 FR 60113 (''Notice'').

[4] *See In the Matter of National Stock Exchange and David Colker,* Securities Exchange Act Release No. 51715 (May 19, 2005) (''Administrative Order'') at Section III.F.1.

[5] *See* Notice.

[6] Proposed ROC Charter.

[7] Proposed ROC Charter, Section A.

[8] Proposed ROC Charter, Section B.

[9] Proposed ROC Charter, Section C.

[10] Proposed ROC Charter, Section D.

days of such NSX Board action, notify the Director of the Commission's Division of Market Regulation in writing, providing copies of all minutes and other records reflecting the ROC's budget proposal and the NSX Board's decision regarding such proposal.[11]

The CRO shall certify compliance with the required items of the Administrative Order to the ROC on a form and frequency basis set by the ROC, and shall have the authority to require such additional compliance certification from the staff as he deems appropriate and in such forms as he may prescribe.[12]

In accordance with the functions and responsibilities set forth above, the ROC shall perform certain oversight functions with respect to the CRO and other regulatory personnel. Specifically, NSX represented in its filing that the ROC shall: [13]

- Review with the Exchange's CRO and other appropriate regulatory personnel various aspects of the design, implementation, and effectiveness of NSX's regulatory programs;
- Review, revise, or approve the CRO's recommendation for a regulatory budget to formulate the ROC's recommendation of an adequate operating budget and staffing level for NSX's regulatory function to the Board;
- Review, evaluate, and, if appropriate, recommend to the Board the implementation of any and all actions recommended by the CRO and the Regulatory Services Division (''NSX Regulatory Division'') to fulfill the NSX Regulatory Division's and the ROC's oversight and advisory responsibilities;
- Assess the performance of the CRO and review the CRO's assessment of the NSX Regulatory Division's staff in fulfilling their responsibilities and recommend compensation and personnel actions to the NSX Board; and
- Review, amend, approve or reject the CRO's recommendations respecting the promulgation, filing, or issuance of new rules, rule amendments, rule interpretations, and regulatory circulars, including the approval (or ratification) of all regulatory circulars issued by the NSX within thirty five days of the issuance of such regulatory circulars.

In addition, NSX represented that, on at least an annual basis, the ROC will review the structural protections that separate NSX's regulatory function from its commercial interests by reviewing the supervisory responsibilities of its Chief Executive Officer (''CEO'') and CRO. Further, the ROC will take all steps necessary to provide reasonable assurance that NSX is and remains in compliance with the Administrative Order and will take any other action necessary to fulfill its oversight and advisory responsibilities.[14]

The ROC shall be comprised of no less than three members, who have been appointed by NSX's Chairman with the approval of the NSX Board in a composition consistent with federal securities laws and NSX's By-Laws and Rules. At a minimum, the ROC members shall not be, nor have been during the preceding three years, employees of NSX or any NSX member firm. The ROC shall elect a Chairperson from among its members.[15]

III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] Specifically, the Commission finds that the proposed rule change, as amended, furthers the objectives of Section 6(b)(1) [17] of the Act, which requires the Exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act and the rules of the Exchange. In addition, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

An exchange's governance structure should be designed to assure that its regulatory function is strong, vigorous, and sufficiently independent and insulated from improper influence from management or any regulated entity. In the Commission's view, the proposal is designed to advance this goal. The proposed amendments provide for a ROC which will be composed of members that shall not be, nor have been during the preceding three years, employees of NSX or any NSX member firm. The ROC will be responsible for oversight of all of NSX's regulatory functions and responsibilities, including, among other things, approving new NSX rules and adopting policies and procedures to ensure the independence of the NSX's CRO. Also, the ROC will review, on at least an annual basis, the structural protections that separate NSX's regulatory function from its commercial interests by reviewing the supervisory responsibilities of NSX's CEO and CRO.[19] The Commission believes that these proposed amendments to the NSX's governance structure will add a degree of independence that should serve to insulate NSX's regulatory activity from its economic interests. As noted above, the Commission notes that NSX filed the proposed rule change in accordance with its undertakings as set forth in the Administrative Order, and represented that the proposed rule change includes provisions that mirror the terms of the undertaking. The Commission believes that in this context, the Exchange's proposal is consistent with the statutory requirements under Section 6(b)(1) of the Act.[20] The Commission notes that it is in the process of reviewing a range of governance issues relating to self-regulatory organizations (''SROs''), including possible steps to strengthen the framework for the governance of SROs and ways to improve the transparency of the governance procedures for all SROs, and has proposed rules in furtherance of this goal, including proposed rules relating to an exchange's ROC.[21] Depending on the results of the proposed rules, NSX may be required to make further changes to strengthen its governance structure and ensure that its ROC continues to comply with federal securities laws.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (File No. SR–NSX–2005–07) and Amendment Nos. 1, 2, and 3, thereto be, and hereby are, approved.

[11] Proposed ROC Charter, Section E.

[12] Proposed ROC Charter, Section A.

[13] *See* Notice.

[14] *Id.*

[15] Proposed ROC Charter.

[16] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(1).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 14 and accompanying text.

[20] 15 U.S.C. 78f(b)(1).

[21] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004).

[22] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6409 Filed 11–21–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before January 23, 2006.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail Hepler, Chief 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief, 504 Program Branch, 202–205–7530, *gail.hepler@sba.gov*. Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: ''Gulf Coast Relief Financing Pilot Information Collection.''

Description of Respondents: Small Businesses devastated by Hurricanes Katrina and Rita.

Form No.'s: 2276–Parts ABC, 2279, 2280, 2281 and 2282.

Annual Responses: 8,000.

Annual Burden: 8,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 05–23044 Filed 11–21–05; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request, Comment Request and Correction Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Application for Widow's or Widower's Insurance Benefits—20 CFR 404.335–.338—0960–0004. SSA uses the information collected on the Form SSA–10–BK to determine if the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for Widow(er)'s benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 288,580.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 72,145 hours.

2. Application for Parent's Insurance Benefits—20 CFR 404.370–404.374, 20 CFR 404.601–404.603—0960–0012. Form SSA–7–F6 collects information to entitle an individual to his parent's insurance benefits. The respondents are individuals who wish to apply to receive their parent's insurance benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,400.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 350 hours.

3. Statement of Marital Relationship (by One of the Parties)—20 CFR 404.726—0960–0038. SSA uses the information collected on Form SSA–754–F4 to determine whether the conditions for establishing a common-law marriage under State law are met. The respondents are applicants for spouse's benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 15,000 hours.

4. Medical Source Statement of Ability To Do Work Related Activities (Physical and Mental)—20 CFR 404.1512–404.1514, 404.912–404.914, 404.1517, 416.917, 404.1519–404.1520, 416.919–416.920, 404.946, 416.946—0960–0662. The HA–1151 and HA–1152 are used to collect data that is required to determine the residual functional capacity (RFC) of individuals who are appealing denied claims for benefits based on disability. RFC must be determined to decide cases that cannot be decided based on current work activity or on medical facts alone. The respondents are medical sources who are paid by SSA to provide reports based either on existing medical evidence or on consultative examinations conducted for the purposes of the report.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 10,000.

Frequency of Response: 20.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 50,000 hours.

5. SSI-Quality Review Case analysis—0960–0133. The form SSA–8508 is used in a personal interview with a sample of Supplemental Security Income (SSI) recipients and covers all elements of SSI eligibility. The information is used to assess the effectiveness of SSI policies and procedures and to determine payment accuracy rates. The respondents are SSI recipients.

Type of Request: Extension of an OMB-approved information collection.

[23] 17 CFR 200.30–3(a)(12).

Number of Respondents: 3,900.
Frequency of Response: 1.
Average Burden per Response: 60 minutes.
Estimated Annual Burden: 3,900 hours.

6. Report of New Information in Disability Cases—20 CFR 404.460, 404.468, 404.408, 404.1588—0960–0071. The information collected on Form SSA–612 is used to update the disability records of respondents, based on changes reported. The form is used to gather information on a number of topics that can affect the beneficiary's or the applicant's entitlement to disability benefits. This includes, but is not limited to, information about a return to work, improvement in the medical condition, Workers' Compensation settlements or representative payee issues. The respondents are applicants for and recipients of Title II disability benefits.
Number of Respondents: 27,000.
Frequency of Response: 1.
Average Burden per Response: 5 minutes.
Estimated Annual Burden: 2,250 hours.

7. Statement of Living Arrangements, In-Kind Support and Maintenance—20 CFR, 416.1130–.1148—0960–0174. Form SSA–8006 provides a national uniform vehicle for collecting information from SSI applicants and recipients about whether they receive income from in-kind support and maintenance. Responses are used to determine eligibility for SSI benefits. The respondents are individuals applying for SSI or whose eligibility is being reevaluated.
Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 173,380.
Frequency of Response: 1.
Average Burden per Response: 7 minutes.
Estimated Annual Burden: 20,228 hours.
Type of Request: Extension of an OMB-approved information collection.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Supplement to Claim of Person Outside the United States—20 CFR 404.460, 404.463, 422.505(b), 42 CFR 407.27(c)—0960–0051. The information collected on Form SSA–21 is used to determine the continuing entitlement to Social Security benefits and the proper benefit amounts for alien beneficiaries living outside the United States. It is also used to determine whether benefits are subject to withholding tax. The respondents are individuals entitled to Social Security benefits who are, will be, or have been residing outside the United States.
Type of Request: Revision of an OMB-approved information collection.
Number of Respondents: 35,000.
Frequency of Response: 1.
Average Burden per Response: 10 minutes.
Estimated Annual Burden: 5,833 hours.

2. Report on Individual with Mental Impairment—20 CFR 404.1513, 416.913—0960–0058. Form SSA–824 is used by SSA to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record librarians and other health professionals.
Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden per Response: 36 minutes.
Estimated Annual Burden: 30,000 hours.

3. Claimant's Work Background—20 CFR 404.1565(b), 416.965(b)—0960–0300. The information collected on Form HA–4633 is needed and used to afford claimants their statutory right to a hearing and decision under the Social Security Act. The information is used by SSA in cases in which claimants for disability benefits have requested a hearing on the determination regarding their claim. A completed form provides an updated summary of a claimant's past relevant work and helps the administrative law judge to better decide whether or not the claimant is disabled. The respondents are claimants requesting hearings for benefits based on disability under Titles II and/or XVI of the Act.
Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 120,000.
Frequency of Response: 1.
Average Burden per Response: 15 minutes.
Estimated Annual Burden: 30,000 hours.

4. Coverage of Employees of State and Local Governments—20 CFR 404, Subpart M—0960–0425. States (and Interstate Instrumentalities) are required to provide wage information and deposit related contributions for pre-1987 periods to SSA. The regulations at 20 CFR 404, Subpart M set forth the rules for States submitting reports of deposits and related recordkeeping. The respondents are State and local governments or Interstate Instrumentalities.
Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 52.
Frequency of Response: 1.
Average Burden per Response: 1 hour.
Estimated Annual Burden: 52 hours.

5. Medical Report on Adult with Allegation of Human Immunodeficiency Virus (HIV) Infection; Medical Report on Child with Allegation of Human Immunodeficiency Virus (HIV) Infection—20 CFR 416.993–416.994—0960–0500. Collection of the information on Forms SSA–4814–F5 and SSA–4815–F6 is necessary for SSA to determine if an individual with HIV infection meets the requirements for presumptive disability (PD) payments. The SSA Field Office (FO) will mail the appropriate form to the claimant's medical source for completion and return to the FO. The FO staff will use the information on the form to determine if a PD is warranted. The respondents are the medical sources of applicants for SSI disability payments.
Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 59,100.
Frequency of Response: 1.
Average Burden per Response: 10 minutes.
Estimated Annual Burden: 9,850 hours.

6. SSI Notice of Interim Assistance Reimbursement (IAR)—0960–0546. Forms SSA–8125 and SSA–L8125–F6 are used by SSA to obtain the amount of Interim Assistance Reimbursement (IAR) a State is due before it can pay IAR to the State in various situations. When SSA releases the first retroactive SSI payment the SSA–8125 is filled out by the State for accounting and auditing purposes. The SSA–L8125–F6 is only used in cases when SSA must ensure that an IAR State does not send a residual IAR payment to a recipient who may be affected by the dedicated account and installment provision as set forth in Pub. Law 100–203. Respondents are State IAR officers.
Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden per Response: 10 minutes.
Estimated Annual Burden: 8,333 hours.

III. The information collections listed below have been submitted to OMB for clearance. These notices have been

previously published, and are being republished because changes have been made to the collections' burden estimates. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. General Request for Social Security Records, eFOIA—20 CFR 402.130—0960–NEW. The eFOIA is a new electronic form that the public can use to request public information from the Agency. SSA uses the information collected on this electronic request for Social Security records to respond to the public's request for information under the rights provided by the Freedom of Information Act (FOIA), and to track those requests by amount received, type of request, fees charged and responses sent within the required 20 days. Respondents are individuals or agencies requesting documents under FOIA.

Type of Request: New information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden per Response: 3 minutes.

Estimated Annual Burden: 250 hours.

2. Application to Collect a Fee for Payee Services—0960–NEW. Information requested on form SSA–445 will be used to determine whether the applicant meets the requirements to become a fee for service organizational payee, and if the applicant has provided all the information and documentation required. Based on the information provided on form SSA–445, SSA will issue a determination authorizing or denying permission to collect fees for payee services. The respondents are fee for payee service applicants.

Type of Request: New information collection.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 17 hours.

Dated: November 15, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–22983 Filed 11–21–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5234]

Culturally Significant Objects Imported for Exhibition Determinations: ''Masterpieces From an English Country House: The Fitzwilliam Collection''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, ''Masterpieces from an English Country House: The Fitzwilliam Collection,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Chrysler Museum of Art, Norfolk, Virginia, from on or about April 28, 2006, to on or about August 13, 2006, the Memphis Brooks Museum of Art, Memphis, Tennessee, from on or about September 15, 2006, to on or about December 3, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, such as a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: November 15, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–23110 Filed 11–21–05; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2005 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in September 2005 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the ATPA eligibility criteria. This notice publishes a list of the September 2005 petitions that were filed in response to the announcement of the annual review.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended. The 2005 Annual ATPA Review is the third such review to be conducted pursuant to the ATPA regulations.

In a **Federal Register** notice dated August 18, 2005, USTR initiated the 2005 ATPA Annual Review and announced a deadline of September 19, 2005 for the filing of petitions (70 FR 48622). Following is the list of responsive petitions that were filed for the 2005 review:

Peru ExxonMobil

USTR also received updated information regarding certain matters under consideration from the 2003 and 2004 ATPA reviews:

Ecuador Human Rights Watch

Ecuador U.S./Labor Education in the Americas Project

Ecuador AFL/CIO

Peru Parsons Corporation

USTR will announce the results of the preliminary review of the 2005 petitions as well as the results of the review of the

remaining 2003 and 2004 petitions on or about December 1, 2005.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 05–23031 Filed 11–21–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 10 a.m. on Monday, December 19, 2005, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh Street, SW., Washington, DC, via conference call. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than December 16, 2005, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 18, 2005.

Albert S. Jacquez,

Administrator.

[FR Doc. 05–23115 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.981–2A, Fuel Tank Flammability

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of available of proposed Advisory Circular (AC) 25.981–2A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which sets forth an acceptable means, but not the only means, of demonstration compliance with the provisions of the airworthiness standards for transport category airplanes related to Fuel Tank Flammability Reduction. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before March 20, 2006.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Mike Dostert, Propulsion/Mechanical Systems Branch, ANM–112, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. 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: Jan Thor, Transport Standards Staff, at the address above, telephone (425) 227–2127.

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 25.981–2A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides information and guidance on compliance with the airworthiness standards for transport category airplanes about limiting the time a fuel tank may be flammable or mitigation of hazards from flammable fuel air mixtures within fuel tanks. This guidance is applicable to transport category airplanes for which a new, amended, or supplemental type certificate is requested and affected existing design approval holders as stated in proposed §§ 25.1815, 25.1817, 25.1819, and 25.1821 contained in a proposed new subpart I to Title 14, Code of Federal Regulations (14 CFR) part 25, ''Continued Airworthiness and Safety Improvement.'' The AC also provides guidance on compliance with the associated proposed requirements for operators of affected airplanes that must comply with the requirements of 14 CFR parts 91, 121, 125, and 129 (for a foreign person or foreign air carrier operating a U.S.-registered airplane) to incorporate flammability mitigation means by specified dates.

The Notice of Proposed Rulemaking would not apply the proposed new requirements to transport category airplanes designed solely for cargo carriage. However, AC 25.981–2 remains applicable to these airplanes, which must comply with the current flammability standards contained in § 25.981(c) that would be moved to the proposed section § 25.981(e). We will consider combining this guidance for all transport category airplanes into one AC when the final rule and AC are issued.

It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–14 entitled ''Fuel Tank Flammability Reduction,'' published in this same edition of the **Federal Register**. Issuance of AC 25.981–2A is contingent on final adoption of the proposed revisions to part 25.

Issued in Renton, Washington, on November 16, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23100 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–112–06]

Below Deck Cargo Compartment Smoke Penetration Into Occupied Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on smoke penetration tests conducted under the provisions of § 25.857.

DATES: The final policy was issued by the Transport Airplane Directorate on November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen Happenny, Federal Aviation

Administration, Transport Airplane Directorate, Transport Standards Propulsion and Mechanical Systems Branch, ANM–112, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2147; fax (425) 227–1320; e-mail: *stephen.happenny@faa.gov.*

SUPPLEMENTARY INFORMATION:

Disposition of Comments

A notice of proposed policy was published in the **Federal Register** on February 19, 2003 (68 FR 8073). Seven (7) commenters responded to the request for comments.

Background

The final policy further simplifies the certification process pertaining to the acceptable amount of smoke penetration permitted into the cabin during a below deck cargo compartment smoke penetration test. It clarifies the test criteria for the means of compliance addressed in AC 25–9A and supplements that material.

The final policy as well as the disposition of comments received is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on November 4, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23016 Filed 11–21–05; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Waiver Petition Docket Number FRA–2005–21964]

Long Island Railroad; Supplemental Notice of Public Hearing and Extension of Comment Period

On September 16, 2005, FRA published a notice in the **Federal Register** announcing the Long Island Railroad's (LIRR) intent to be granted a waiver of compliance from certain provisions of the *Railroad Operating Practices* regulations, 49 Code of Federal Regulations (CFR) part 218, regarding blue signal protection of workers. *See* 70 FR 54801. Specifically, LIRR requests relief from the requirements of 49 CFR 218.29 *Alternate methods of protection,* at its Diesel Service Facilities in Richmond Hills, NY, and Long Island City, NY.

According to LIRR, both facilities are stub-end yards jointly used by both its transportation and mechanical forces. These yards function to service, maintain, inspect, and dispatch the diesel passenger fleet for the LIRR. Each facility has a speed limit of 5 mph, with fixed derails on each service track, and manually operated switches. Yard movement is controlled by a yardmaster. Due to the configuration and service demands, the yard cannot facilitate the placement of a derail at the 150-foot interval as prescribed in § 218.29. Additionally, LIRR believes that lining and locking the manual switches increases potential error of proper switch alignment, and is a safety concern for all employees working in the area. Therefore, LIRR requests that employees at these two facilities be allowed to place derails at a distance of 50-feet from the equipment. LIRR states that they will post signage to reinforce the 5-mph speed restriction, as well as paint physical clearance lines denoting the 50-foot distance.

As a result of the comments received by FRA concerning this waiver petition, FRA has determined that a public hearing is necessary before a final decision is made on this petition. Accordingly, a public hearing is hearby set to begin at 9 a.m. on December 21, 2005, in Conference Room 820 at the Hunters Point Plaza, 47–40 21st Street, Long Island City, New York 11101. Interested parties are invited to present oral statements at this hearing.

The hearing will be informal and will be conducted in accordance with FRA's Rules of Practice (49 CFR part 211.25) by a representative designated by FRA. FRA's representative will make an opening statement outlining the scope of the hearing, as well as any additional procedures for the conduct of the hearing. The hearing will be a non-adversarial proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition, without cross-examination. After all initial statements have been completed, those persons wishing to make a brief rebuttal statements will be given an opportunity to do so in the same order in which initial statements were made.

In addition, FRA is extending the comment period in this proceeding until December 30, 2005. FRA reserves the right to announce a further extension of the comment period for the purpose of receiving post-hearing submissions should that appear appropriate in the judgment of the Board based on testimony received at the public hearing. All communications concerning these proceedings should identify the appropriate docket number (Waiver Petition Docket Number FRA–2005–21964) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 15, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–23027 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2005–22824

Applicant: National Railroad Passenger Corporation, Mr. William Crosbie, Senior Vice President, Operations, 60 Massachusetts Avenue, NE., Washington, DC 20002.

The National Railroad Passenger Corporation (Amtrak) with the concurrence from Connecticut Department of Transportation (CDOT) and the Providence and Worcester

Railroad Company (P&W), seeks approval of the proposed modification of five remote-controlled interlockings protecting movable bridges on Amtrak's Northeast Corridor, New England Division, in Connecticut, on Main Tracks No. 1 and No. 2, as follows:

1. The discontinuance and removal of the four power-operated derails at ''Conn,'' milepost 106.8, at the Connecticut River, in Old Saybrook, Connecticut;

2. The discontinuance and removal of the four power-operated derails at ''Nan,'' milepost 116.7, at the Niantic River, in Niantic, Connecticut;

3. The discontinuance and removal of the four power-operated derails at ''Shaws Cove,'' milepost 122.5, in New London, Connecticut;

4. The discontinuance and removal of the four power-operated derails at ''Groton,'' milepost 124.2, at the Thames River, Groton, Connecticut; and

5. The discontinuance and removal of the four power-operated derails at ''Mystic River,'' milepost 131.9, in Mystic, Connecticut;

The changes proposed consist of the removal of four derails at each interlocking, one for each track in each direction. Each of the interlocking home signals protecting these derails and the associated movable bridges have been equipped with the Northeast Corridor 100 Hz coded cab signal system with speed control, or Automatic Train Control (ATC). The interlockings have also been equipped with Amtrak's Advanced Civil Speed Enforcement System (ACSES) Positive Train Stop (PTS), in addition to ATC.

The reason given for the proposed changes is that removal of the derails is to eliminate maintenance and operation of obsolete hardware no longer needed, and to reduce delays to trains caused by failures of the derails and the associated movable bridges. The derails have been rendered obsolete by ATC and ACSES technologies, which enforce slowing and stopping of trains prior to passing the interlocking home signals in stop position, rather than derail the train after it passes the stop signal.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 15, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–23026 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19549; Notice 2]

Decision That Nonconforming 2001 Chevrolet Blazer (Plant Code ''K'' or ''2'') Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by National Highway Traffic Safety Administration that nonconforming 2001 Chevrolet Blazer (plant code ''K'' or ''2'') multipurpose passenger vehicles are eligible for importation.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 2001 Chevrolet Blazer (plant code ''K'' or ''2'') multipurpose passenger vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2001 Chevrolet Blazer (plant code ''K'' or ''2'') MPV), and they are capable of being readily altered to conform to the standards.

DATES: This decision was effective January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. (WETL) (Registered

Importer 90–005), petitioned NHTSA to decide whether 2001 Chevrolet Blazer MPVs are eligible for importation into the United States. NHTSA published notice of the petition on November 16, 2004 (69 FR 67208) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition from General Motors Corporation (''GM''), the manufacturer of the 2001 Chevrolet Blazer. In this comment, GM stated that during the 2001 model year, GM and its subsidiaries and affiliates assembled Chevrolet Blazers at several locations around the world. Those intended for sale in the United States, Canada, and some other world markets, were produced at two assembly plants located within the United States, at Linden, New Jersey (identified by plant code ''K'' in the 11th position of the vehicle identification number or ''VIN'' assigned to the vehicle) and at Moraine, Ohio, (identified by plant code ''2'' in the 11th position of the VIN).

GM stated that production of 2001 Chevrolet Blazers also occurred at a number of plants outside of the United States. GM stated that in order to satisfy unique market conditions and local regulations, vehicles produced at these foreign plants differed from those produced domestically in a number of respects, including the interior trim, chassis, and powertrain components with which they were built. Owing to the design and part differences between the 2001 Chevrolet Blazers produced domestically, and those produced overseas for foreign markets, GM stated that there is no assurance that the vehicles produced overseas would comply with, or are capable of being readily altered to conform to all applicable FMVSS. GM noted that it does not typically perform tests or evaluations to determine the compliance of foreign market vehicles with the FMVSS because the vehicles were never intended for sale or use in the U.S. market. GM further observed that Blazers built overseas for foreign markets may contain locally sourced parts that are not subject to the same manufacturing, warranty, and approval process used within GM's North American operations and that these foreign sourced parts may have an impact on the vehicles' conformity with the FMVSS.

In light of these considerations, GM expressed the opinion that only the U.S. manufactured versions of the subject vehicles (those with plant codes ''K'' or ''2'' in the 11th position of their VINs) should be considered substantially similar to vehicles originally manufactured for sale in the U.S. and capable of being modified to comply with the FMVSS. GM contended that ''* * * subject vehicles manufactured at all other locations should not be considered substantially similar to vehicles originally manufactured for sale in the U.S. and, thus, not eligible for importation.''

NHTSA accorded WETL an opportunity to respond to GM's comments. WETL stated that the 2001 Chevrolet Blazers that are the subject of its petition are U.S. manufactured vehicles with plant codes ''K'' or ''2'' in the 11th position of their VINs. WETL therefore did not challenge GM's contention that vehicles with plant codes other than these should not be considered substantially similar to U.S.-certified models and therefore eligible for importation. In view of GM's comments and WETL's response, NHTSA decided to grant import eligibility only to 2001 Chevrolet Blazers with the plant code ''K'' or ''2'' in the eleventh character of their VINs.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–461 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decided that 2001 Chevrolet Blazer MPVs that were not originally manufactured to comply with all applicable FMVSS, but that have been assigned vehicle identification numbers in which the letter ''K'' or the number ''2'' is the eleventh character, are substantially similar to 2001 Chevrolet Blazer MPVs originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–23099 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; DaimlerChrysler

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of DaimlerChrysler Corporation (DaimlerChrysler) for an exemption of a high-theft line, the Dodge Charger, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2007.

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

SUPPLEMENTARY INFORMATION: In a petition dated March 30, 2005, DaimlerChrysler requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Dodge Charger vehicle line. The petition has been filed pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line. DaimlerChrysler's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year.

DaimlerChrysler stated that all Dodge Charger vehicles would be equipped with a standard Sentry Key Immobilizer System (SKIS) antitheft device. In its petition, DaimlerChrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the vehicle line. The SKIS antitheft

device to be installed on the Dodge Charger is a transponder-based, passive immobilizer antitheft device designed to provide protection against unauthorized vehicle use. The immobilizer feature is activated when the key is removed from the ignition switch. Once activated, only a valid key inserted into the ignition switch will disable immobilization and allow the vehicle to start and continue to run. The antitheft device does not provide any visible or audible indication of unauthorized entry by means of flashing vehicle lights or sounding of the horn.

The SKIS consists of the Sentry Key Remote Entry Module (SKREEM), the Powertrain Control Module (PCM), and the Sentry Key, which collectively perform the immobilizer function. The SKREEM is the primary component of the SKIS. When the ignition switch is turned to the ''ON'' position, the SKREEM transmits a radio frequency (RF) signal to the transponder in the ignition key. If the response received identifies the key as valid, the SKREEM sends a valid key message to PCM over the PCI data bus, and the PCM allows the engine to continue to run. To avoid any perceived delay when starting the vehicle with a valid key and to prevent unburned fuel from entering the exhaust, the engine is permitted to run for no more than 2 seconds if an invalid key is used. If the response identifies the key as invalid, or if no response is received from the key transponder, the SKREEM sends an invalid key message to the PCM. The PCM will disable engine operation (after the initial 2 second run) based upon the status of the SKREEM messages.

According to DaimlerChrysler, each ignition key used in the antitheft device has an integral transponder chip included on the circuit board. The ignition key must be cut to match the mechanical coding of the ignition lock cylinder and programmed for operation of the Remote Keyless Entry (RKE) system. Additionally, each new key is programmed with a unique transponder identification code by the manufacturer and must be recognized by the SKREES as a valid key. The Sentry Key transponder cannot be adjusted or repaired. If it is faulty or damaged, the entire key and RKE must be replaced.

In addressing the specific content requirements of § 543.6, DaimlerChrysler provided information on the reliability and durability of its device. To ensure the reliability and durability of the device, it conducted tests based on its own specified standards. DaimlerChrysler provided information on tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test. DaimlerChrysler stated that all of the devices undergo a series of three functional tests prior to being shipped from the supplier to the vehicle assembly plant for installation in the vehicles. Additionally, the antitheft device incorporates an indicator light to convey information on the status of the system to the customer.

DaimlerChrysler believes that the immobilizer system proposed for the Dodge Charger will be at least as effective as compliance with the parts-marking requirements of the theft prevention standard. DaimlerChrysler stated that its experience with vehicles subject to the parts-marking requirement that are subsequently equipped with ignition immobilizer systems as standard equipment indicate that even lower theft rates can be expected from vehicles equipped with standard ignition immobilizer systems as that proposed.

For supportive purposes, DaimlerChrysler offered the Jeep Grand Cherokee vehicles as an example of vehicles subject to part 541 parts-marking requirements that subsequently are equipped with ignition immobilizer systems as standard equipment. NHTSA's theft rates for the Jeep Grand Cherokee vehicles for model years 1995 through 1998 were 5.5545, 7.0188, 4.3163, and 4.3557, respectively, all significantly higher than the 1990/1991 median theft rate. DaimlerChrysler indicated that, since the introduction of immobilizer systems as standard equipment on the Jeep Grand Cherokee vehicles, the average theft rate for the MY 1999 through 2003 is 2.6537, which is significantly lower than the 1990/1991 median theft rate of 3.5826. The Jeep Grand Cherokee vehicles were granted an exemption from the parts-marking requirements beginning with MY 2004 vehicles.

On the basis of this comparison, DaimlerChrysler has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by DaimlerChrysler, the agency believes that the antitheft device for the Dodge Charger vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6 (a)(4) and (5), the agency finds that DaimlerChrysler has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information DaimlerChrysler provided about its device. For the foregoing reasons, the agency hereby grants in full DaimlerChrysler petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541.

If DaimlerChrysler decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if DaimlerChrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption.

Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 10, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–23035 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; DaimlerChrysler

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

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of DaimlerChrysler Corporation (DaimlerChrysler) for an exemption in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard,* for the Chrysler 300C vehicle line beginning with model year (MY) 2006. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2006.

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

SUPPLEMENTARY INFORMATION: In a petition dated August 13, 2005, DaimlerChrysler requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Chrysler 300C vehicle line. The petition has been filed pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line. DaimlerChrysler's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year.

DaimlerChrysler stated that all Chrysler 300C vehicles would be equipped with a standard Sentry Key Immobilizer System (SKIS) antitheft device. In its petition, DaimlerChrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the vehicle line. The SKIS antitheft device to be installed on the Chrysler 300C is a transponder-based, passive immobilizer antitheft device designed to provide protection against unauthorized vehicle use. The immobilizer feature is activated when the key is removed from the ignition switch. Once activated, only a valid key inserted into the ignition switch will disable immobilization and allow the vehicle to start and continue to run. The antitheft device does not provide any visible or audible indication of unauthorized entry by means of flashing vehicle lights or sounding of the horn.

The SKIS consists of the Sentry Key Remote Entry Module (SKREEM), the Powertrain Control Module (PCM), and the Sentry Key, which collectively perform the immobilizer function. The SKREEM is the primary component of the SKIS. When the ignition switch is turned to the ''ON'' position, the SKREEM transmits a radio frequency (RF) signal to the transponder in the ignition key. If the response received identifies the key as valid, the SKREEM sends a valid key message to PCM over the PCI data bus, and the PCM allows the engine to continue to run. To avoid any perceived delay when starting the vehicle with a valid key and to prevent unburned fuel from entering the exhaust, the engine is permitted to run for no more than 2 seconds if an invalid key is used. If the response identifies the key as invalid, or if no response is received from the key transponder, the SKREEM sends an invalid key message to the PCM. The PCM will disable engine operation (after the initial 2 second run) based upon the status of the SKREEM messages.

According to DaimlerChrysler, each ignition key used in the antitheft device has an integral transponder chip included on the circuit board. The ignition key must be cut to match the mechanical coding of the ignition lock cylinder and programmed for operation of the Remote Keyless Entry (RKE) system. Additionally, each new key is programmed with a unique transponder identification code by the manufacturer and must be recognized by the SKREES as a valid key. The Sentry Key transponder cannot be adjusted or repaired. If it is faulty or damaged, the entire key and RKE must be replaced.

In addressing the specific content requirements of 543.6, DaimlerChrysler provided information on the reliability and durability of its device. To ensure the reliability and durability of the device, it conducted tests based on its own specified standards. DaimlerChrysler provided information on tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test. DaimlerChrysler stated that all of the devices undergo a series of three functional tests prior to being shipped from the supplier to the vehicle assembly plant for installation in the vehicles. Additionally, the antitheft device incorporates an indicator light to convey information on the status of the system to the customer.

DaimlerChrysler believes that the immobilizer system proposed for the Chrysler 300C will be at least as effective as compliance with the parts-marking requirements of the theft prevention standard. DaimlerChrysler stated that its experience with vehicles subject to the parts-marking requirement that are subsequently equipped with ignition immobilizer systems as standard equipment indicate that even lower theft rates can be expected from vehicles equipped with standard ignition immobilizer systems as that proposed.

For supportive purposes, DaimlerChrysler offered the Jeep Grand Cherokee vehicles as an example of vehicles subject to Part 541 parts-marking requirements that subsequently are equipped with ignition immobilizer systems as standard equipment. NHTSA's theft rates for the Jeep Grand Cherokee vehicles for model years 1995 through 1998 were 5.5545, 7.0188, 4.3163, and 4.3557, respectively, all significantly higher than the 1990/1991 median theft rate. DaimlerChrysler indicated that, since the introduction of immobilizer systems as standard equipment on the Jeep Grand Cherokee vehicles, the average theft rate for the MY 1999 through 2003 is 2.6537, which is significantly lower than the 1990/1991 median theft rate of 3.5826. The Jeep Grand Cherokee vehicles were granted an exemption from the parts-marking requirements beginning with MY 2004 vehicles.

On the basis of this comparison, DaimlerChrysler has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by DaimlerChrysler, the agency believes that the antitheft device for the Chrysler 300C vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3):

Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6 (a)(4) and (5), the agency finds that DaimlerChrysler has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information DaimlerChrysler provided about its device. For the foregoing reasons, the agency hereby grants in full DaimlerChrysler petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR Part 541.

If DaimlerChrysler decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if DaimlerChrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, ''543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 21, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–23036 Filed 11–21–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34778]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP), has agreed to grant limited temporary overhead trackage rights to BNSF Railway Company (BNSF) for eastbound trains on: (1) UP's Dallas Subdivision from Tower 55 at Fort Worth, TX (milepost 245.3), to Longview, TX (milepost 89.6); (2) UP's Little Rock Subdivision from Longview (milepost 89.6), to North Little Rock, AR (milepost 343.6); (3) UP's Hoxie Subdivision from North Little Rock, AR (milepost 343.6), to Bald Knob, AR (milepost 287.9); and (4) UP's Memphis Subdivision between Bald Knob (milepost 287.9) to Kentucky Street, Memphis, TN (milepost 378.1), a distance of approximately 542.2 miles. UP has also agreed to grant limited temporary overhead trackage rights to BNSF for westbound trains on: (1) UP's Memphis Subdivision from Kentucky Street to Briark, AR (milepost 375.3); (2) UP's Brinkley Sub (milepost 4.1) to Brinkley, AR (milepost 70.6); (3) UP's Jonesboro Subdivision (milepost 200.5) to Pine Bluff, AR (milepost 264.2); (4) UP's Pine Bluff Subdivision (milepost 264.2) to Big Sandy, TX (milepost 525.1); and (5) UP's Dallas Subdivision (milepost 114.5) to Tower 55, TX (milepost 245.3), a distance of approximately 526.3 miles.

The transaction was scheduled to be consummated on November 10, 2005, and the temporary trackage rights will expire on December 23, 2005. The purpose of the temporary trackage rights is to allow BNSF to bridge its trains while its main lines are out of service due to programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34778, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, Senior General Attorney, BNSF Railway Company, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 15, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–22989 Filed 11–21–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Minority Bank Deposit Program (MBDP) Certification Form for Admission

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 3144 ''Minority Bank Deposit Program (MBDP) Certification Form for Admission''.

DATES: Written comments should be received on or before January 23, 2006.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mary Bailey, Bank Policy and Oversight Division, 401 14th Street, SW., Room 317, Washington, DC 20227, (202) 874–7055.

SUPPLEMENTAL INFORMATION: Pursuant to the Paperwork Reduction Act of 1995,

(44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Minority Bank Deposit Program (MBDP) Certification Forms for Admission.

OMB Number: 1510–0048.

Form Number: FMS 3144.

Abstract: This form is used by financial institutions to apply for participation in the Minority Bank Deposit Program. Institutions approved for acceptance in the program are entitled to special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. 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.

Gary Grippo,

Assistant Commissioner, Federal Finance.

[FR Doc. 05–23025 Filed 11–21–05; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–868–89]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, INTL–868–89 (TD 8353), Information With Respect to Certain Foreign-Owned Corporations (§§ 1.6038A–2 and 1.6038A–3).

DATES: Written comments should be received on or before January 23, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Information With Respect to Certain Foreign-Owned Corporations.

OMB Number: 1545–1191.

Regulation Project Number: INTL–868–89 (Final).

Abstract: This regulation requires record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS international examiners to better audit the tax returns of corporations engaged in crossborder transactions with a related party.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 63,000.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 630,000.

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: November 10, 2005.

Joseph Durbala,

IRS Reports Clearance Officer

[FR Doc. E5–6408 Filed 11–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer

Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, December, 15, 2005.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, December 15, 2005 from 8 a.m. Pacific Time to 9:30 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: November 15, 2005.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–6405 Filed 11–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, December 15, 2005 from 12:30 p.m. Pacific time to 1:30 p.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: November 15, 2005.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–6406 Filed 11–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, December 13, 2005, from 1:30 p.m. to 2:30 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, December 13, 2005 from 1:30 p.m. to 2:30 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: November 15, 2005.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–6407 Filed 11–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Voluntary Dissolution

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 22, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: OTS Desk Officer, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.*

OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or fax number (202) 906–6518, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Voluntary Dissolution.

OMB Number: 1550–0066.

Form Number: N/A.

Regulation Requirement: 12 CFR 546.4.

Description: 12 CFR 546.4 provides for federal associations to voluntarily dissolve through the submission of a statement of reasons and plan of dissolution. Approval is required by the board of directors, OTS, and the association's members. Plans for dissolution may be denied if OTS believes the plan is not in the best interests of concerned parties.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 4.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: Plan for dissolution—80 hours; disclosure to customers (averaging 4,140 customers per respondent)—ten minutes per customer.

Estimated Total Burden: 3,080.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: OTS Desk Officer, Fax: (202) 395–6974, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503.

Dated: November 16, 2005.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 05–23046 Filed 11–21–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development.

ACTION: Notice of Government Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or Cooperative Research and Development Agreements (CRADA) Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Amy E. Centanni, Department of Veterans Affairs, Director, Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: (202) 254–0255; e-mail at: *amy.centanni@mail.va.gov.*

Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: U.S. Provisional Patent Application No. 60/707,732 ''Methods for Accelerating Bone Repair.''

Dated: November 15, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E5–6402 Filed 11–21–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
November 22, 2005

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 41

Office of Thrift Supervision

12 CFR Part 571

Federal Reserve System

12 CFR Parts 222 and 232

Federal Deposit Insurance Corporation

12 CFR Part 334

National Credit Union Administration

12 CFR Part 717

Fair Credit Reporting Medical Information Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket No. 05–18]

RIN 1557–AC85

FEDERAL RESERVE SYSTEM

12 CFR Parts 222 and 232

[Regulation V and FF; Docket No. R–1188]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AC81

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[No. 2005–49]

RIN 1550–AB88

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

Fair Credit Reporting Medical Information Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA).

ACTION: Final rules.

SUMMARY: The OCC, Board, FDIC, OTS, and NCUA (Agencies) are publishing final rules to implement section 411 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The final rules create exceptions to the statute's general prohibition on creditors obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit for all creditors. The exceptions permit creditors to obtain or use medical information in connection with credit eligibility determinations where necessary and appropriate for legitimate purposes, consistent with the Congressional intent to restrict the use of medical information for inappropriate purposes. The final rules also create limited exceptions to permit affiliates to share medical information with each other without becoming consumer reporting agencies. The final rules are substantially similar to the rules adopted by the Agencies on an interim final basis in June 2005.

DATES: The effective date of the interim final rule published on June 10, 2005 (70 FR 33958) is delayed until April 1, 2006. The amendments in this final rule are effective April 1, 2006.

FOR FURTHER INFORMATION CONTACT:

OCC: Amy Friend, Assistant Chief Counsel, (202) 874–5200; Michael Bylsma, Director, or Stephen Van Meter, Assistant Director, Community and Consumer Law, (202) 874–5750; or Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David A. Stein, Counsel; Minh-Duc T. Le, Ky Tran-Trong, or Krista P. DeLargy, Senior Attorneys, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Andrew Miller, Counsel, Legal Division, (202) 452–3428, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; David Lafleur, Policy Analyst, (202) 898–6569, or Patricia Cashman, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6534, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Glenn Gimble, Senior Project Manager, Operation Risk, (202) 906–7158; Richard Bennett, Counsel, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Regina M. Metz, Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background

The FACT Act became law on December 4, 2003. Public Law 108–159, 117 Stat. 1952. In general, the FACT Act amends the Fair Credit Reporting Act (FCRA or Act) to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive.

Section 411 of the FACT Act generally limits the ability of creditors to obtain or use medical information in connection with credit eligibility determinations and the ability of consumer reporting agencies to disclose medical information, and restricts the sharing of medical information and other medically related information with affiliates. The FACT Act also revised the definition of ''medical information'' in section 603(i) of the FCRA to mean information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to the past, present, or future physical, mental, or behavioral health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual. The term ''medical information'' does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

Section 604(g)(1) of the FCRA restricts the circumstances under which consumer reporting agencies may furnish consumer reports that contain medical information about consumers. This provision is not the subject of the Agencies' rulemaking.

Section 604(g)(2) of the FCRA prohibits creditors from either obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit. The statute contains no prohibition, however, on creditors obtaining or using medical information for other purposes that are not in connection with a determination of the consumer's eligibility, or continued eligibility, for credit. Section 604(g)(5)(A) requires the Agencies to prescribe regulations that permit transactions that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes), consistent with Congressional intent to restrict the use of medical information for inappropriate purposes.

Section 603(d)(3) of the FCRA restricts the sharing of medically related information with affiliates if that information meets the definition of ''consumer report'' in section 603(d)(1) of the FCRA. Specifically, section 603(d)(3) provides that the standard

exclusions from the definition of ''consumer report'' contained in section 603(d)(2)—such as sharing transaction or experience information among affiliates or sharing other information among affiliates after notice and an opportunity to opt-out—do not apply if medically related information is disclosed to an affiliate. Medically related information includes medical information, as described above, as well as an individualized list or description based on payment transactions for medical products or services, and an aggregate list of identified consumers based on payment transactions for medical products or services.

Section 604(g)(3) of the FCRA provides several exceptions that allow institutions to share medically related information with affiliates in accordance with the standard exclusions that apply to the sharing of non-medically related information.[1] The statute gives the Agencies and the FTC the authority to create additional exceptions by regulation or order.

Section 604(g)(4) of the FCRA provides that any person that receives medical information from an affiliate pursuant to an exception in section 604(g)(3) or from a consumer reporting agency under section 604(g)(1) must not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

II. Overview of Comments Received

On April 28, 2004, the Agencies published a notice of proposed rulemaking in the **Federal Register** (69 FR 23380) relating to the medical information provisions of section 411 of the FACT Act. The proposed rules applied to banks, thrifts, Federal credit unions, and other creditors regulated by one of the Agencies. Most commenters supported the proposed rules, but urged the Agencies to broaden the scope of the rules to apply to all creditors.

On June 10, 2005, the Agencies published interim final rules and a request for public comments in the **Federal Register** (70 FR 33958). The interim final rules created exceptions to the general prohibition against creditors obtaining or using medical information in connection with credit eligibility determinations, as required by section 604(g)(5)(A), to permit transactions necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes), consistent with the intent of Congress to restrict the use of medical information for inappropriate purposes. In response to comments on the proposed rules, the scope of the interim final rules was expanded so that all creditors could rely on the exceptions for obtaining and using medical information in connection with credit eligibility determinations. The interim final rules also created exceptions to the special restrictions in section 603(d)(3) on sharing medically related information with affiliates, as permitted by section 604(g)(3)(C). The Agencies published these rules as interim final rules to give interested parties an opportunity to comment on the expanded scope of the exceptions for obtaining and using medical information in connection with credit eligibility determinations.

Each Agency received the following number of comment letters on the interim final rules: OCC (8), Board (13), FDIC (9), OTS (7), and NCUA (11). Comments were received from industry commenters (including depository institutions, credit card companies, mortgage lenders and other non-bank creditors, and industry trade associations), consumer and community groups, and health privacy advocates. As discussed more fully below, commenters strongly supported the expanded scope of the rules to allow all creditors to rely on the exceptions for obtaining and using medical information in connection with credit eligibility determinations. The comments, and the Agencies' responses to the comments, are discussed in the following section-by-section analysis.

III. Section-by-Section Analysis

Section____.3 Definitions

The Agencies received no comments on the definitions of ''Act,'' ''company,'' ''consumer,'' ''common ownership or common corporate control,'' ''medical information,'' or ''person'' as defined in the interim final rules. These definitions are republished in the final rules without revision.

Affiliate

Section____.3(b) of the interim final rules defined ''affiliate'' to mean any company that is related by common ownership or common corporate control with another company.[2] The Agencies concluded that this definition of ''affiliate'' closely tracked the definition contained in section 2 of the FACT Act. The Agencies also concluded that there was no substantive difference between the FACT Act definition of ''affiliate'' and the definition of ''affiliate'' in section 509 of the Gramm-Leach-Bliley Act (GLB Act).

One commenter requested use of an alternative definition of ''affiliate'' that would incorporate certain concepts from California law. Specifically, this commenter suggested revising the definition of ''affiliate'' to eliminate information sharing restrictions among affiliates that are regulated by the same or similar functional regulators, involved in the same broad line of business, or share a common brand or identity. This commenter maintained that such a definition would reduce costs and allow multiple entity financial institutions to better serve their clients.

The Agencies decline to incorporate into the definition of ''affiliate'' exceptions for entities regulated by the same or similar functional regulators, entities in the same line of business, or entities that share a common brand or identity. These exceptions were incorporated into a California financial privacy law in August 2003.[3] Section 2 of the FACT Act defines the term ''affiliate'' to mean ''persons that are related by common ownership or affiliated by corporate control.''[4] Congress did not incorporate the exceptions from California law into the definition of ''affiliate'' when it enacted the FACT Act at the end of 2003. The Agencies believe that the definition of ''affiliate'' included in the interim final rules better effectuates the intent of Congress than the revision suggested by the commenter. Accordingly, the

[1] The statutory exceptions provide that an institution may share medically related information with an affiliate without having the communication categorically treated as a consumer report if the information is disclosed to an affiliate: (1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003); (2) For any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services (HHS) pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA); (3) For any purpose referred to under section 1179 of HIPAA; (4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act; or (5) As otherwise determined to be necessary and appropriate, by regulation or order, by the Federal Trade Commission (FTC), the Agencies, or an applicable State insurance authority. 15 U.S.C. 1681b(g)(3).

[2] For purposes of the regulation, an ''affiliate'' includes an operating subsidiary of a bank or savings association, and a credit union service organization that is controlled by a Federal credit union.

[3] *See* Calif. Financial Code § 4053(c).

[4] Fair and Accurate Credit Transactions Act of 2003, Public Law No. 108–159, § 2, 117 Stat. 1952, 1953 (2003).

definition of ''affiliate'' is republished without change in the final rules.

Section____.30 Obtaining or Using Medical Information in Connection With a Determination of Eligibility for Credit

Section 411(a) of the FACT Act adds a new section 604(g)(2) to the FCRA. This provision contains a broad limitation on the ability of creditors to either obtain or use medical information in connection with credit eligibility determinations.

A. Scope of Rules on Obtaining or Using Medical Information

The proposed rules would have applied the exceptions to banks, thrifts, and Federal credit unions. Many commenters on the proposal urged the Agencies to expand the scope of the exceptions to apply to all creditors, not just to creditors that are banks, thrifts, or Federal credit unions.

As noted in the supplementary information to the interim final rules, the prohibition in section 604(g)(2) on creditors obtaining or using medical information in connection with credit eligibility determinations applies to all creditors. Under the FCRA, the term ''creditor'' has the same meaning as in the Equal Credit Opportunity Act (''ECOA''), which defines a ''creditor'' as any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.[5] Creditors include depository institutions as well as entities that are neither depository institutions nor affiliates of depository institutions, such as independent finance companies, loan brokers, health care providers, and automobile dealers.

The statute does not contain any specific exceptions to this broad prohibition. Instead, section 604(g)(5) directs the Agencies to prescribe regulations to permit ''transactions'' in which creditors obtain or use medical information where ''necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.''[6]

The supplementary information to the interim final rules noted that section 604(g)(5) does not, by its terms, limit the creditors that may rely on exceptions granted by the Agencies. Moreover, that section, by its terms, applies to ''transactions'' for which the Agencies determine exceptions are necessary, not to ''creditors'' that the Agencies determine must be protected by the exceptions. Accordingly, the combined scope of the exceptions adopted pursuant to section 604(g)(5) in the interim final rules is as broad as the prohibition to which it applies, and is available to all creditors.

The interim final action was comprised of six rules. The applicability of the section of each Agency's rule addressing the prohibition on and exceptions for creditors obtaining or using medical information in connection with credit eligibility determinations was set forth in § ____.30(a) and covered transactions in which certain enumerated entities participate as creditors. Under § ____.30(a)(2), other entities that participate as creditors in transactions in which an enumerated entity also participates as a creditor would also be subject to that Agency's rule.

In addition, the interim final action included a separate rule, codified in part 232 of the Board's chapter of the *Code of Federal Regulations* as Regulation FF (hereafter ''separate rule''), which afforded the exceptions to the prohibition against obtaining and using medical information for credit eligibility determinations generally to all creditors, except for creditors that are subject to one of the other Agencies' rules. This combination of rules established uniform coverage and exceptions for transactions involving any creditor that is subject to the prohibition on obtaining or using medical information in section 411. The separate rule was located in the Board's chapter of the *Code of Federal Regulations* as a matter of convenience because many creditors are accustomed to looking to the Board's regulations implementing other statutes, such as the Truth-in-Lending Act and the ECOA.

In the supplementary information to the interim final rules, the Agencies expressed concern that uncertainty about this matter may have led creditors that believed they could not avail themselves of the exceptions not to comment on the appropriateness and details of the exceptions. Therefore, these rules were adopted on an interim final basis to provide interested parties with an opportunity to comment on the expanded scope of the rules.

Most commenters strongly supported the approach taken in the interim final rules to expand the scope of the exceptions to apply to all creditors. None of the commenters objected to the expanded scope of the exceptions.

One commenter expressed concern about enforcement of the rules in the event of potential abuses by non-bank creditors using medical information pursuant to the exceptions and requested that the Agencies and the FTC address this issue. The Agencies will enforce compliance with the final rules against creditors subject to their enforcement authority. The Agencies will coordinate with other agencies to promote compliance with the final rules by all creditors, including through referrals to the relevant enforcement agency where appropriate.

One trade association representing state and Federal credit unions urged the NCUA to reassess its authority to apply its rule to state-chartered credit unions or, alternatively, to seek a legislative solution to provide the NCUA, or state regulators, with rulemaking authority over state-chartered credit unions with regard to medical information. This commenter believed that allowing the NCUA to exercise rulemaking authority with respect to state-chartered credit unions would be more effective than having a separate rule located in the Board's chapter of the *Code of Federal Regulations* that applies to ''all other creditors'' because the NCUA works more closely with state-chartered credit unions than the Board does. Finally, this commenter suggested that there was ambiguity regarding the rules and the authority to enforce the rules against state-chartered credit unions.

The NCUA and the other Agencies believe that covering state-chartered credit unions under the separate rule is the most appropriate means for making the exceptions to the general prohibition applicable to those entities. Under section 621(a) of the FCRA, the FTC has enforcement authority over state-chartered credit unions. As noted in the supplementary information to the interim final rule, the separate rule has been located in the Board's chapter of the *Code of Federal Regulations* as a matter of convenience because many creditors are accustomed to looking to the Board's regulations implementing other statutes, such as the Truth-in-Lending Act and the Equal Credit Opportunity Act.

Accordingly, the scope of the final rules is identical to the scope of the interim final rules. The final rules consist of the six rules included in the interim final rules. The scope provisions in § ____.30(a) of each Agency's rule and § 232.1(a) of the separate rule are

[5] 15 U.S.C. 1681a(r)(5) and 1691a(e).

[6] 15 U.S.C. 1681b(g)(5)(A).

republished without change in the final rules.[7]

In the supplementary information to the interim final rules, the Agencies emphasized the importance of having consistent rules that prescribe exceptions to the prohibitions from obtaining or using medical information in connection with credit eligibility determinations. Thus, in developing the proposed, interim final, and final rules, the Agencies have consulted and coordinated with each other to establish identical rules. The Agencies will consult and coordinate with each other regarding any amendments to the rules for the purpose of assuring, to the extent possible, that the regulations prescribed by each Agency remain consistent and comparable with the regulations prescribed by the other Agencies.

B. General Prohibition on Obtaining or Using Medical Information

Section ____.30(b)(1) of each Agency's interim final rule and § 232.1(b) of the separate rule incorporated the statute's general rule prohibiting creditors from obtaining or using medical information pertaining to a consumer in connection with any determination of a consumer's eligibility, or continued eligibility, for credit, except as provided in the regulations under subpart D. The Agencies received no comments on these provisions. Section ____.30(b)(1) of each Agency's rule and § 232.1(b) of the separate rule are republished without change in the final rule.

Section ____.30(b)(2) of each Agency's interim final rule and § 232.1(c) of the separate rule clarified the meaning of certain terms used in the statutory prohibition and the proposed rule, including ''eligibility, or continued eligibility, for credit,'' ''credit,'' and ''creditor.'' One commenter requested that the Agencies clarify that the definitions of ''credit'' and ''creditor'' include the Board's interpretations of these terms pursuant to the Board's Regulation B, which implements the ECOA, and the Board's official staff commentary to Regulation B.[8]

As noted in the supplementary information to the interim final rules, section 603(r)(5) of the FCRA provides that the terms ''credit'' and ''creditor'' have the same meanings as in section 702 of the ECOA. The interim final rules track the FCRA definitions of ''credit'' and ''creditor.'' The Board's interpretation of the terms ''credit'' and ''creditor'' in Regulation B and the official staff commentary to Regulation B, as appropriate, informs the application of those terms for FCRA purposes.

C. Receiving Unsolicited Medical Information

Section ____ .30(c) of each Agency's interim final rule contained a rule of construction for the receipt of unsolicited medical information. Section 232.2 of the separate rule contained the identical provision. The rule of construction provides that a creditor does not obtain medical information in violation of the prohibition if it receives such information from a consumer, a consumer reporting agency, or any other person in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information. The interim final rules clarified that a creditor that receives unsolicited medical information may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit only to the extent the creditor can rely on one of the exceptions in §§ ____ .30(d) and (e) of each Agency's rule or §§ 232.3 and .4 of the separate rule. The interim final rules also provided examples to illustrate the rule of construction.

One commenter noted that it had previously requested that the provision dealing with receipt of unsolicited medical information should be an exception, rather than a rule of construction. As explained in the supplementary information to the interim final rules, the rule of construction was retained as an interpretation, rather than as an exception, because it interprets the statutory language regarding when a creditor ''obtains'' medical information in violation of the prohibition. This commenter also noted that it had previously suggested limiting the ability of creditors to indirectly solicit or encourage the sharing of medical information. As explained in the supplementary information to the interim final rules, the rule of construction uses the phrase ''without specifically requesting medical information.'' The examples make clear that the rule of construction applies when medical information is provided by the consumer in response to a general inquiry that does not specifically request medical information or is provided by the consumer voluntarily on an unsolicited basis.

This commenter also reiterated its previous request that the Agencies require creditors to destroy or eliminate any unsolicited medical information that they receive. As explained in the supplementary information to the interim final rules, the destruction of unsolicited medical information would not be appropriate in circumstances where records must be retained. For example, if unsolicited medical information is obtained by a creditor on a credit application for which adverse action is taken, the creditor generally would be required to retain a copy of the application, including any medical information on the application, for 25 months pursuant to the record retention provisions of Regulation B, which implements the ECOA. Therefore, the Agencies decline to impose a requirement to destroy or eliminate unsolicited medical information. Section ____ .30(c) of each Agency's rule and § 232.2 of the separate rule are republished without change in the final rule.

D. Financial Information Exception for Obtaining and Using Medical Information

Section ____ .30(d) of each Agency's interim final rule contained the financial information exception and examples. Section 232.3 of the separate rule contained the identical provision and examples.[9] The financial information exception consists of a three-part test. First, the information must be the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds. Second, the creditor must use the information in a manner and to an extent no less favorable than it would use comparable information

[7] OTS is making a technical change to the scope provision of its Fair Credit Reporting rule (section 571.1(b)) to make the provision more user-friendly.

[8] Under Regulation B, the Board defines the term ''creditor'' to mean a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit, and includes a creditor's assignee, transferee, or subrogee who so participates. A creditor also includes a person, such as a broker, who regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made, for purposes of Regulation B's prohibitions against discrimination and discouragement. A person is not a creditor regarding any violation of the ECOA or Regulation B committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. Finally, a creditor does not include a person whose only participation in a credit transaction involves honoring a credit card. *See* 12 CFR 202.2(1).

[9] For simplicity, references and citations to the separate rule have been omitted from the discussion below. For any change made to the provisions of §§ ____ .30(d) and (e), corresponding changes have been made to §§ 232.3 and 232.4 of the separate rule.

that is not medical information in a credit transaction. Third, the creditor must not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination of credit eligibility. The interim final rules also provided examples of the types of information covered by the exception, uses of medical information that are consistent with the exception, and uses of medical information that are not consistent with the exception.

One commenter noted that none of the examples explicitly mention workers' compensation, even though § ____ .30(d)(1)(i) and the example in § ____ .30(d)(2)(i)(C) appear to cover the use of medical information to determine the likelihood and amount of future medically-based income, including by analogy workers' compensation. This commenter therefore requested a clarification that medically-based income, such as workers' compensation, may be obtained and used under the exception just as disability income.

The Agencies agree that workers' compensation is income that would be covered by the financial information exception so long as it is the type of information routinely used in making credit eligibility determinations. The Agencies have revised the example in § ____.30(d)(2)(i)(C) to add a reference to workers' compensation. Specifically, the example has been revised to read as follows: ''The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment.''

The Agencies reiterate their statement in the supplementary information to the interim final rule that the types of information listed as examples of information routinely used in making credit eligibility determinations for purposes of the financial information exception is not an exhaustive list. The fact that a particular type of information is not specifically mentioned in the text of the regulation or the accompanying examples does not mean that such information falls outside the scope of the financial information exception.

Another commenter requested clarification of the example in § ____.30(d)(2)(i)(D) that the provision does not require the identity and contact information for medical debt creditors to be coded when included on credit reports. Sections 604(g)(1) and 605(a)(6) of the FCRA generally require consumer reporting agencies to use codes on consumer reports furnished in connection with credit transactions that do not identify the specific provider of medical information or the nature of such services, products, or devices to a person other than the consumer, unless the uncoded information is relevant to process or effect the transaction and the consumer provides specific written consent for the furnishing of the uncoded information. The requirement for consumer reporting agencies to code certain information on consumer reports is beyond the scope of this rulemaking. Therefore, the Agencies decline to amend the example in the manner requested.

The Agencies are revising the example in § ____.30(d)(2)(iii)(C) to illustrate a circumstance where a creditor requires the consumer to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a ''nonaffiliated third party'' in order to obtain a loan. This change is designed to avoid confusion with other legal requirements. As noted in the supplementary information to the interim final rules, other laws and regulations, including applicable anti-tying rules and fair lending laws, may prohibit or otherwise restrict a creditor from requiring a consumer to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with an extension of credit.[10] A discussion of the circumstances prohibited by other laws and regulations is beyond the scope of this rule.

One commenter believed that a sentence in the supplementary information to the interim final rules created a conflict with the financial information exception by implying that the only circumstance where the creditor could legitimately seek medical information was when the consumer is applying to finance a medical procedure. This commenter believed that a conflict was created by the following sentence: ''Thus, except where a creditor has a specific application for the financing of medical procedures, a creditor generally would be prohibited from specifically asking for medical information on a credit application.'' (70 FR 33967.) This commenter requested that the Agencies modify this sentence to state that: ''Except where a creditor has a specific application for the financing of medical procedures *or has received an application in which income was claimed as deriving from injury or disability,* a creditor generally would be prohibited from specifically asking for medical information on a credit application.''

The Agencies do not believe that the quoted sentence from the supplementary information to the interim final rules creates a conflict with the financial information exception. The quoted language refers to circumstances in which medical information may be specifically requested on an application. The revision requested by the commenter does not relate to what a creditor may ask on an application, but relates to whether a creditor may use medical information it ''has received [on] an application in which income was claimed as deriving from injury or disability.'' If a consumer lists medically related income on an application, the creditor may use that information in accordance with the exceptions in §§ ____.30(d) and (e). The application, however, should not specifically request the consumer to disclose such medically related income. Of course, the application can ask the consumer to list all sources of income that the consumer would like the creditor to consider. Section ____.30(d) of the final rule is revised as noted above.

E. Specific Exceptions for Obtaining and Using Medical Information

Sections ____.30(e)(1)(i)–(ix) of the interim final rules contained a number of specific exceptions to the general prohibition. Section ____.30(e) of the interim final rules provided examples of certain exceptions. These exceptions allow creditors to obtain and use medical information for a limited number of particular purposes in connection with a determination of the consumer's eligibility, or continued eligibility, for credit. A creditor that obtains medical information pursuant to one of these specific exceptions may not subsequently use the information in connection with determining the consumer's eligibility, or continued eligibility, for credit unless an exception applies. The specific exceptions and examples are republished in each Agency's final rules and the separate rule with a few technical, non-substantive changes.

Determination of power of attorney, legal representative and legal capacity. Section ____.30(e)(1)(i) of the interim final rules contained an exception relating to the use of a power of attorney

[10] For example, banks are prohibited from conditioning an extension of credit on the consumer obtaining some additional credit, property or service from the bank or its affiliate other than a loan, discount, deposit or trust service, see Bank Holding Company Amendments of 1970 § 106(b) (12 U.S.C. 1972); see also 12 CFR 37.3(a) (providing that a national bank may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation contract or debt suspension agreement with the bank).

or legal representative. This exception permits a creditor to obtain and use medical information in connection with determining the consumer's credit eligibility to determine: (1) Whether the use of a power of attorney or legal representative that is triggered by a medical event or condition is necessary and appropriate; or (2) whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical event or condition.

One commenter requested that the Agencies broaden the scope of this exception to permit creditors to investigate the mental capacity of a consumer based on a suspicion that the consumer lacks the capacity to contract. This commenter did not believe that an exception to permit an inquiry into the consumer's legal capacity ''when a person seeks to exercise a power of attorney or act as a legal representative for a consumer based on an asserted medical event or condition'' was broad enough to cover all circumstances where the consumer's legal capacity may be in doubt. This commenter urged the Agencies to clarify that creditors may investigate the mental capacity of a consumer even when there is no power of attorney issue, and that a reasonable suspicion is a sufficient basis to conduct the investigation. Additionally, or in the alternative, this commenter requested clarification that loan denials based on lack of legal mental capacity are not eligibility issues; therefore, no exception is necessary, because use of medical information for this purpose is not subject to the general statutory prohibition. Finally, this commenter did not believe that the terms ''medical event'' or ''condition'' were clear for purposes of the power of attorney exception. Specifically, this commenter believed it was unclear how significant the medical event or condition must be, who must make the determination that the medical event or condition has occurred, and whether a suspicion allows the creditor to investigate further.

As noted in the supplementary information to the interim final rules, commenters on the proposal were divided on the need for a broader exception covering powers of attorney and legal capacity. In the interim final rules, the Agencies considered whether to adopt a broader exception, but declined to do so. The Agencies believe that creditors, or their counsel, are qualified to determine whether a power of attorney or legal representative status has been properly invoked based on an asserted medical condition or event. Creditors generally are not qualified to determine the mental capacity of a consumer. Moreover, permitting creditors to inquire into the mental capacity of consumers based only on a ''reasonable suspicion'' could result in discrimination against certain consumers and circumvention of the general prohibition. Therefore, the Agencies decline to expand the exception in the manner requested by the commenter.

The Agencies recognized in the supplementary information to the interim final rules that a power of attorney or legal representative status may be used in a variety of circumstances, many of which may have no connection with a determination of a consumer's eligibility, or continued eligibility, for credit. Nevertheless, the Agencies concluded that an exception was necessary because a power of attorney or legal representative status based on an asserted medical condition or event may relate to a credit eligibility determination in certain circumstances. The Agencies do not agree with the commenter that the use of medical information to deny loans based on a lack of mental capacity is not connected with credit eligibility determinations. Accordingly, the Agencies cannot state categorically that medical information used for this purpose is not subject to the general prohibition.

The Agencies believe that the terms ''medical event'' and ''medical condition'' are clear. The Agencies note that these terms have been used in a number of other exceptions without objection as to their clarity.

A technical, non-substantive change is made to § ____.30(e)(1)(i) in the final rules. Section ____.30(e)(1)(i) is revised to replace ''medical event or condition'' with ''medical condition or event'' for consistency with the exceptions in §§ ____.30(e)(viii) and (ix).

Compliance with applicable law. Section ____.30(e)(1)(ii) of the interim final rules contained an exception to permit a creditor to obtain and use medical information to comply with applicable requirements of local, state, or Federal laws.

One commenter believed that, even when an applicant meets the minimum standard of legal capacity, there may be situations in which the creditor believes that the consumer may not fully understand the nature of the transaction or be able to determine whether it is in his or her best interest. This commenter argued that HOEPA and its borrower's interest and net tangible benefit tests, as well as state anti-flipping laws, could be read to require an evaluation of the consumer's medical condition. Therefore, this commenter requested the Agencies to confirm its interpretation that the compliance with applicable laws exception is broad enough to permit creditors to consider medical conditions even though such laws do not specifically require the consideration of medical conditions.

The Agencies acknowledge that it may be necessary to obtain and use medical information to comply with various requirements of local, state, or Federal laws. A discussion of whether specific laws and legal requirements may trigger this exception would involve interpretation of those laws and is beyond the scope of this rulemaking. Section ____.30(e)(1)(ii) is republished without change in the final rules.

Special credit program or credit-related assistance program. Section ____.30(e)(1)(iii) of the interim final rules contained an exception to permit creditors to obtain and use medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, to determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is: (a) Designed to meet the special needs of consumers with medical conditions and (b) established and administered pursuant to a written plan of the plan sponsor that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program. This exception was added in the interim final rules and is modeled after the provisions relating to special purpose credit programs in the ECOA and the Board's Regulation B, 12 CFR part 202. An example of this exception was provided in § ____.30(e)(2). Commenters supported the addition of this exception. Sections ____.30(e)(1)(iii) and (e)(2) are republished without change in the final rules.

Fraud prevention or detection. Section ____.30(e)(1)(iv) of the interim final rules contained an exception for fraud prevention or detection. One commenter reiterated a previous request that the Agencies delete this exception, maintaining that the exception was overly broad and unnecessary.

As explained in the supplementary information to the interim final rules, the fraud prevention or detection exception is available only to the extent necessary to detect or prevent fraud. The Agencies believe that there may be limited circumstances where the use of medical information is necessary for

fraud prevention or detection purposes. For example, given the broad definition of ''medical information'' and the development of increasingly sophisticated anti-fraud technologies, such as various biometric tools, the Agencies believe it is important to retain the fraud prevention or detection exception so as not to hinder the development of new anti-fraud technologies. Furthermore, the supplementary information to the interim final rules also noted that creditors may not rely on blanket assertions of a fraud prevention or detection purpose to fall within the exception, but must demonstrate the necessity for, and actual use of, medical information to prevent or detect fraud. Section ____.30(e)(1)(iv) is republished without change in the final rules.

Financing medical products or services. Section ____.30(e)(1)(v) of the interim final rules contained an exception for the financing of medical products or services. Section ____.30(e)(3) of the interim final rules provided examples of this exception. The Agencies received no comments on the medical financing exception in the interim final rules. Sections ____.30(e)(1)(v) and (e)(3) are republished without change in the final rules.

Medical accommodation. Section ____.30(e)(1)(vi) of the interim final rules contained an exception for medical accommodations to consumers. This exception applies where the consumer, or the consumer's legal representative, specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor. Any such accommodation must be consistent with safe and sound practices. The interim final rules permitted the medical accommodation exception to be triggered by the consumer's oral, electronic, or written request. Moreover, a consumer could make a specific request by responding to a generic inquiry on a credit application that invites the consumer to describe any special circumstances or other information (not limited to medical information) that the consumer would like the creditor to consider in evaluating the consumer's application. Section ____.30(e)(4) of the interim final rules provided examples to illustrate the medical accommodation exception.

One commenter believed that the regulation should clarify that, to meet the medical accommodation exception, the consumer need not be the first to broach the topic of medical information. This commenter maintained that a creditor should be able to raise the topic in a manner consistent with the prohibition against holding information about a medical condition against the consumer. For example, if negative information from a medical furnisher appeared on a consumer's credit report, this commenter would want the loan officer to be able to explain that the consumer may voluntarily provide an explanation of the underlying medical condition and, if the consumer did so, the creditor could verify that explanation. This commenter also requested the creation of a ''safe harbor'' provision to permit the use of a consent form (or standard language read over the telephone) to satisfy compliance with the medical accommodation exception. This commenter believed that use of a consent form containing standard language is appropriate once the consumer indicates that he or she wants the creditor to consider medical information to accommodate the consumer.

As explained in the supplementary information to the interim final rules, the medical accommodation exception is triggered by the specific request of the consumer. The example in § ____.30(e)(4)(iii) of the interim final rules and the supplementary information also explained that a consumer may make a specific request by responding to a generic inquiry on a credit application that invites the consumer to describe any special circumstances or other information (not limited to medical information) that the consumer would like the creditor to consider in evaluating the consumer's application. The medical accommodation exception is not triggered until the consumer makes a specific request for an accommodation. Therefore, in the circumstances described by the commenter, the use by a creditor of medical information from a consumer report, such as information about a medical debt, to make a specific inquiry about the consumer's medical condition is not consistent with the financial information exception and is not permitted.

Of course, if a consumer's credit report shows a substantial unpaid debt that has been coded as medical information, the creditor may use that information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information. For example, if two consumers apply for credit and each has a $50,000 debt that is 90-days past due, one of which is a coded medical debt and the other which is a non-medical debt, the creditor may seek an explanation from the consumer with the medical debt about the amount and status of the debt and verify that explanation, provided that the creditor's policies and procedures also require that the creditor seek an explanation from the consumer with the non-medical debt about the amount and status of the debt and verifies that explanation.

The Agencies decline to provide a model consent form that would create a safe harbor for satisfying the medical accommodation exception. In the interim final rules, the Agencies omitted the requirement for a separate signed writing by the consumer that describes the specific medical information and the specific purpose for which it is to be used. Instead, the Agencies chose to adopt a more flexible standard that focuses on the specific request of the consumer for a medical accommodation and the creditor's documentation of that request. Under this approach, the creditor is not restricted to any particular form of documentation of the consumer's request. For example, once a consumer has requested a medical accommodation, a creditor may elect to document a consumer's request by having the consumer complete and sign a standard consent form. Although the example in § ____.30(e)(4)(v) provides that the use of boilerplate language in an application to routinely obtain consumer authorization or consent to obtain and use medical information for credit eligibility determinations does not constitute a specific request for a medical accommodation, nothing in that example prohibits the use of a standard consent form as a means of documentation once the consumer has made a specific request. Because other forms of documentation may also be appropriate, the Agencies do not believe the final rules should specify any particular form of documentation or create a safe harbor for one particular form of documentation. Sections ____.30(e)(1)(vi) and (e)(4) are republished without change in the final rules.

Forbearance. Section ____.30(e)(1)(vii) of the interim final rules contained an exception to the general prohibition for forbearance practices and programs that are triggered by medical events or conditions. Specifically, this exception permits creditors to obtain and use medical information ''consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical event or condition apply to a consumer.''

One commenter requested that the rule clarify that the phrase ''similar forbearance practice or program'' includes informal forbearance practices by creditors. According to the commenter, this clarification would benefit consumers because the creditor would be able to consider medical information in decisions regarding additional credit or debt deferment.

As noted in the supplementary information to the interim final rule, the forbearance exception is flexible enough to cover both formal and informal forbearance practices and programs. Therefore, the Agencies believe that the recommended change is unnecessary.

A technical, non-substantive change is made to § ____.30(e)(1)(vii) in the final rules. Section ____.30(e)(1)(vii) is revised to replace ''medical event or condition'' with ''medical condition or event'' for consistency with the exceptions in §§ ____.30(e)(viii) and (ix). In addition, a non-substantive change is made to the example of the forbearance exception in § ____.30(e)(5) by adding a concluding sentence to indicate that the exception would apply in the example presented.

Debt cancellation contracts, debt suspension agreements, or credit insurance products. Section ____.30(e)(1)(viii) of the interim final rules contained an exception for debt cancellation contracts and debt suspension agreements. Section ____.30(e)(1)(ix) of the interim final rules contained an exception for credit insurance products.

These exceptions made clear that creditors may use medical information to underwrite credit insurance, or to underwrite related credit products, such as debt cancellation contracts and debt suspension agreements, if a medical condition or event is a triggering event for the provision of benefits. However, the fact that a consumer is denied these products cannot be used as a subterfuge to consider medical information in making a determination about eligibility or continued eligibility for an underlying loan. Therefore, a creditor may not use medical information about a consumer, such as the fact that the consumer uses a wheelchair, to determine whether the consumer will be required to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product.[11] The Agencies received no comments on these two exceptions. Sections ____.30(e)(1)(viii) and (ix) are republished without change in the final rules.

Additional exceptions requested by commenters. One commenter reiterated a previous request that the final rules exclude from the prohibition on obtaining or using medical information employers, plan administrators, and card issuers that provide flexible spending account programs or healthcare reimbursement account programs that utilize cards with credit features. As noted in the supplementary information to the interim final rules, the Agencies believe that an additional exception that relates to flexible spending programs tied to credit cards is not needed because the commenter's concerns are adequately addressed by the definition of ''eligibility, or continued eligibility, for credit'' and the existing exceptions.

Section ____.31 Limits on Redisclosure of Information

Section ____.31 of each Agency's interim final rule incorporated the statutory provision regarding the limits on redisclosure of medical information. This section provided that a person receiving medical information about a consumer from a consumer reporting agency or an affiliate is prohibited from disclosing that information to any other person, except as necessary to carry out the purposes for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order. The separate rule did not contain a comparable provision on redisclosure limits because the Agencies' rulemaking authority under section 604(g)(5)(A) of the FCRA does not apply to the statute's redisclosure provision.

The Agencies received one comment on the redisclosure provision. The Agencies have incorporated into this rulemaking the redisclosure provision directly from the statute, without further interpretation. Section ____.31 is therefore republished without change in the final rules.

Section ____.32 Sharing Medical Information With Affiliates

Section ____.32 of the interim final rules addressed the sharing of medically related information with affiliates. Section ____.32(a) of the interim final rules described the institutions to which this section applies. Section ____.32(b) of the interim final rules restated the statutory restriction on sharing medically related information with affiliates. Section ____.32(c) of the interim final rules contained exceptions to the statutory restriction on sharing medically related information with affiliates. The separate rule did not contain a comparable provision on sharing medically related information with affiliates because the Agencies' rulemaking authority under section 604(g)(5)(A) of the FCRA does not apply to the statute's affiliate sharing provisions.

A number of commenters expressed concern that the separate rule does not address the sharing of medically related information with affiliates. These commenters generally believed that there should be regulatory provisions parallel to those in § ____.32 to create exceptions applicable to all creditors that share medically related information with affiliates. Some of these commenters requested that the Agencies modify the separate rule to incorporate these exceptions. Other commenters recognized the limited regulatory authority of the Agencies with respect to the sharing of medically related information with affiliates and requested that the FTC issue a rule consistent with the provisions of § ____.32. One commenter requested a clarification that creditors not subject to § ____.32 could rely on the statutory exceptions for sharing medically related information with affiliates. Another commenter urged NCUA to encourage the Board to provide guidance to state-chartered credit unions and other creditors on this issue.

Each Agency's authority to create exceptions to permit the sharing of medically related information with affiliates is limited to prescribing rules applicable to entities subject to the jurisdiction of each particular Agency. The FTC has the authority to promulgate rules creating exceptions to the restrictions on sharing medically related information with affiliates for entities subject to the FTC's enforcement authority. The Agencies have forwarded comments on this issue to the FTC for its consideration.

The Agencies note that five of the six exceptions included in § ____.32(c) simply repeat exceptions specifically enumerated in the statute. Any person may rely on the statutory exceptions as appropriate. The only exception not contained in the statute relates to sharing medically related information with an affiliate in connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § ____.30, and is found in § ____.32(c)(5).

In many circumstances where this additional, non-statutory exception would apply, it is likely that one of the exceptions enumerated in the statute would also apply, such as the exception linked to section 502(e) of the GLB Act. For example, if a creditor has an affiliate

[11] As noted above, other laws and regulations may prohibit or otherwise restrict a creditor from requiring a consumer to obtain one of these products in connection with an extension of credit.

perform underwriting for loans it originates and the creditor receives an application containing information about medical debts, the creditor may furnish the application, including the medical debt information, to the underwriting affiliate for use in underwriting consistent with the exceptions in § ____.30. This sharing of medical information would be permissible both because it is in connection with a determination of the consumer's credit eligibility consistent with § ____.30 and because the disclosure is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer in accordance with section 502(e) of the GLB Act. Section ____.32 is therefore republished without change in the final rules.

Effective Date

The effective date of the interim final rules, published in the **Federal Register** on June 10, 2005 (70 FR 33958), is delayed until April 1, 2006, the first day of the calendar quarter. The effective date of these final rules published today is also April 1, 2006. These final rules will immediately replace the interim final rules on April 1, 2006, and only these final rules will be in effect on or after April 1, 2006.

One commenter believed that an implementation date should not be set until at least six months after a final determination as to which agency will enforce these rules against state-chartered credit unions and which agency is responsible for providing guidance on information sharing with affiliates of state-chartered credit unions. As noted above, the FCRA clearly provides that the FTC is responsible for enforcing the statute against state-chartered credit unions. Similarly, any regulations on information sharing with affiliates of state-chartered credit unions would have to be issued by the FTC. The Agencies do not believe that any further delay in the effective date is warranted.

V. Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506, *et seq.*) and its implementing regulations at 5 CFR part 1320, including Appendix A.1, the Agencies have reviewed the final rules and determined that they contain no collections of information. The Board made this determination under authority delegated by the Office of Management and Budget.

Regulatory Flexibility Analysis

OCC: Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' for banking purposes as a bank or savings institution with assets of $150 million or less. *See* 13 CFR 121.201.

The OCC published an Initial Regulatory Flexibility Analysis in connection with the April 28, 2004 NPRM. The OCC also certified that there would not be a significant economic impact on a substantial number of small entities in the June 10, 2005 interim final rule. The OCC did not receive any comments relating to significant economic impact upon a substantial number of small entities on either the NPRM or interim final rule.

The final rule implements section 411 of the FACT Act and imposes only minimal economic impact on entities covered by the OCC's final rule. The final rule creates exceptions to the FACT Act's prohibition against national banks obtaining and using a consumer's medical information in connection with credit determinations. Additionally, the final rule implements the FACT Act's restrictions on the sharing of medical information among affiliates and includes exceptions to permit the sharing of medical information in certain circumstances. The final rule applies to all national banks and Federal branches and agencies. The final rule also applies to persons, regardless of asset size, that participate in a credit transaction involving a national bank or Federal Branch or agency that obtain or use medical information in connection with credit determinations. Approximately 1,077 national banks have assets of $150 million or less. The OCC is unable to estimate the number of persons that may participate in a credit transaction with national banks or Federal branches or agencies. The OCC has determined that the estimated per bank cost of the final rule is not large enough to have a significant economic impact. Therefore, the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Board: The Board prepared a regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) in connection with the June 10, 2005, interim final rule. The Board received no comments on its regulatory flexibility analysis.

Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on the analysis below, the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities for the reasons stated below.

1. *Statement of the need for and objectives of the final rule.* The FACT Act amends the FCRA and was enacted, in part, for the purpose of protecting consumers' medical information. Section 411 of the FACT Act contains a general prohibition on creditors obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit. Section 411 authorizes the Board, together with the other Agencies, to create exceptions to allow creditors to obtain or use medical information for eligibility purposes where necessary and appropriate to protect legitimate operational, transactional risk, consumer, and other needs, consistent with the Congressional intent to restrict the use of medical information for inappropriate purposes.

Section 411 also limits the ability of an institution to share medical information with its affiliates without becoming a consumer reporting agency, subject to certain exceptions, and restricts the redisclosure of medical information. The statute authorizes the Board to issue regulations to create additional exceptions that are determined to be necessary and appropriate to permit the sharing of medical information among affiliates. The Board is adopting the final rule to create exceptions that permit creditors to obtain and use medical information in credit eligibility determinations, restate the limits on redisclosure, and restate and add to the exceptions that allow sharing among affiliates. The **SUPPLEMENTARY INFORMATION** above and the **SUPPLEMENTARY INFORMATION** to the interim final rule (70 FR 33958) contain information on the objectives of the final rule.

2. *Summary of issues raised by comments in response to the interim final regulatory flexibility analysis.* In accordance with section 3(a) of the

Regulatory Flexibility Act, the Board conducted a regulatory flexibility analysis in connection with the interim final rules. The Board did not receive any comments on its regulatory flexibility analysis.

3. *Description of small entities affected by the proposal.* Each section of the final rule applies to different types of small entities and specifies the types of small entities subject to that section. The final rule will apply, in whole or in part, to banks that are members of the Federal Reserve System (other than national banks) and their subsidiaries, branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks) and their subsidiaries, commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*), bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies), and creditors that participate in transactions with one of the above-mentioned entities. A separate rule codified in Regulation FF will apply to creditors not otherwise subject to one of the Agency rules. The Board's final rule will apply to the following institutions (numbers approximate): State member banks (932), bank holding companies (5,152), holding company non-bank subsidiaries (2,131), U.S. branches and agencies of foreign banks (289), and Edge and agreement corporations (75), for a subtotal of approximately 8,579 institutions. The Board estimates that over 5,000 of these institutions could be considered small institutions with assets less than $150 million. The Board is unable to estimate the number of creditors that may participate in transactions with such institutions or the number of other creditors that may be covered by the separate rule codified in Regulation FF.

All small entities that are creditors will be affected by the provision of the final rule that addresses the prohibition on, and exceptions to, creditors obtaining or using medical information in connection with credit eligibility determinations. All small creditors will have to comply with the exceptions if they obtain or use medical information about consumers in connection with any credit eligibility determination.

4. *Recordkeeping, reporting, and compliance requirements.* The final rule requires certain documentation to qualify for some of the specific exceptions, as discussed in the **SUPPLEMENTARY INFORMATION** above and the **SUPPLEMENTARY INFORMATION** to the interim final rule (70 FR 33958). The final rule contains no reporting or disclosure requirements.

5. *Steps taken to minimize the economic impact on small entities.* The Board solicited comment on how to minimize the economic impact on small entities. The Board did not receive any comments on this issue. By adopting consistent rules and exceptions, the Board and the other Agencies have attempted to minimize the economic impact on small entities.

FDIC: The FDIC prepared a regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC received no comments on its analysis.

Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. FDIC certified that the interim final rule will not have a significant economic impact on a substantial number of small entities; and upon further analysis, the FDIC certifies that this final rule creating exceptions to the FACT Act's general prohibition on creditors obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit will not have a significant economic impact on small entities.

The Small Business Administration (SBA) has defined ''small entities'' for banking purposes as a bank or savings institution with assets of $150 million or less. See 13 CFR 121.201. This final rule, as authorized by section 411 of the FACT Act, creates exceptions to allow creditors to obtain or use medical information for eligibility purposes where necessary and appropriate to protect legitimate operational, transactional risk, consumer, and other needs, consistent with the Congressional intent to restrict the use of medical information for inappropriate purposes. The rule also excludes, in certain situations, medical information shared by a covered entity with an affiliate from the definition of a consumer report in section 603(d) of the FCRA, and addresses the reuse and redisclosure of medical information.

The final rule applies to all state banks insured by the FDIC (other than members of the Federal Reserve System), all insured State branches of foreign banks, and persons that participate in a credit transaction involving these banks, regardless of their size. Of the approximately 5,250 banks that fall in these categories, approximately 3,368 have assets of $150 million or less.

OTS: In accordance with section 603(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603(a)), OTS conducted an initial regulatory flexibility analysis in connection with the April 28, 2004 proposed rule. OTS did not receive any comments on its initial regulatory flexibility analysis.

Upon further analysis, OTS certified in accordance with section 605(b) of the RFA (5 U.S.C. 605(b)) that the June 10, 2005 interim final rule would not have a significant economic impact on a substantial number of small entities. OTS received no comments on its certification. OTS makes the same certification for this final rule. The Small Business Administration (SBA) has generally defined small savings institutions for RFA purposes as those with assets of $150 million or less. 13 CFR 121.201.

This final rule implements section 411 of the FACT Act and imposes only minimal economic impact. Section 571.30 creates exceptions to allow creditors to obtain or use medical information for credit eligibility purposes where necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs, consistent with the Congressional intent to restrict the use of medical information for inappropriate purposes. It applies to any of the following, regardless of size, that participates as a creditor in a transaction: (1) A savings association; (2) a subsidiary owned in whole or in part by a savings association; (3) a savings and loan holding company; (4) a subsidiary of a savings and loan holding company other than a bank or subsidiary of a bank; (5) a service corporation owned in whole or in part by a savings association; or (6) any other person that participates as a creditor in a transaction involving a person described in (1)–(5).

Section 571.31 implements the FACT Act's restrictions on the redisclosure of information. Section 571.32 implements the FACT Act's restrictions on the sharing of medical information among affiliates and includes exceptions to permit the sharing of medical information in certain circumstances. These sections apply to savings associations and federal savings association operating subsidiaries, regardless of size.

As referenced in the Supplementary Information to the interim final rule (70 FR 33958), other laws and regulations, such as the Fair Housing Act, the Americans with Disabilities Act, and OTS's anti-discrimination rules in 12 CFR part 528, also limit or regulate obtaining and using medical information for credit eligibility determinations in a manner that discriminates against persons whose medical condition constitutes a ''disability'' or ''handicap'' under those authorities. Other laws, such as the GLB Act, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and other parts of the FCRA, also limit or regulate the use, collection, and sharing of consumer information, including medical information. The industry's preexisting familiarity and compliance with the requirements of these other authorities to the extent applicable is one factor that OTS expects will minimize the economic impact of today's final rule.

NCUA: The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of the Regulatory Flexibility Act. NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2. NCUA conducted an initial regulatory flexibility analysis in connection with the proposed rule and did not receive any comments on it.

NCUA certified that the interim final rule would not have a significant economic impact on a substantial number of small entities and, upon further review, now also certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule applies to all Federal credit unions that obtain or use a consumer's medical information in connection with credit determinations, regardless of credit union size. The final rule creates exceptions to the FACT Act's prohibition against Federal credit unions obtaining and using such information in connection with credit determinations. Additionally, the final rule implements the FACT Act's restrictions on the sharing of medical information among Federal credit union affiliates, credit union service organizations (CUSOs), and includes exceptions to permit the sharing of medical information in certain circumstances.

Small Business Regulatory Enforcement Fairness Act

FDIC: The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857) provides generally for agencies to report rules to Congress and for Congress to review these rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) (5 U.S.C. 551, et seq.). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

NCUA: A SBREFA (Pub. L. 104–121) reporting requirement is also triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act 5 U.S.C. 551. NCUA is submitting this final rule to the Office of Management and Budget for a determination that this rule is not a major rule for purposes of SBREFA.

OCC and OTS Executive Order 12866 Determination

The OCC and OTS each has determined that its portion of the rule is not a significant regulatory action under Executive Order 12866.

OCC Executive Order 13132 Determination

The OCC has determined that this rule does not have any Federalism implications, as required by Executive Order 13132, because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

NCUA Executive Order 13132 Determination

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

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS each has determined that their respective final rules will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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

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

Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act (GLB Act) (12 U.S.C. 4809), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The proposed rule requested comments on how the rule might be changed to reflect the requirements of GLB Act. No GLB Act comments were received.

List of Subjects

12 CFR Part 41

Banks, banking, Consumer protection, National banks, Reporting and recordkeeping requirements.

12 CFR Part 222

Banks, banking, Consumer protection, Credit, Fair Credit Reporting Act, Holding companies, Privacy, Reporting and recordkeeping requirements, State member banks.

12 CFR Part 232

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 334

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 571

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 717

Consumer protection, Credit unions, Fair credit reporting, Medical information, Privacy, Reporting and recordkeeping requirements.

12 CFR Chapter I

Office of the Comptroller of the Currency

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends Chapter I of Title 12 of the *Code of Federal Regulations* as follows:

PART 41—FAIR CREDIT

■ 1. Revise the authority citation for part 41 to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681a, 1681b, 1681s, 1681w, 6801, and 6805.

■ 2. Revise subpart A to read as follows:

Subpart A—General Provisions

§ 41.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 41.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any company that is related by common ownership or common corporate control with another company.

(c) [Reserved]

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) *Common ownership or common corporate control* means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the OCC determines; or

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (i)(1)(i)–(i)(1)(iii) of this section.

(j) [Reserved]

(k) *Medical information* means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer's residence address or e-mail address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l) *Person* means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.

■ 3. Add subpart D to read as follows:

Subpart D—Medical Information

§ 41.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) *Scope.* This section applies to:

(1) Any person that participates as a creditor in a transaction and that is a national bank, a Federal branch or agency of a foreign bank, and their respective subsidiaries; or

(2) Any other person that participates as a creditor in a transaction involving a person described in paragraph (a)(1) of this section.

(b) *General prohibition on obtaining or using medical information.* (1) *In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(2) *Definitions.* (i) *Credit* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) *Eligibility, or continued eligibility, for credit* means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c) *Rule of construction for obtaining and using unsolicited medical information.* (1) *In general.* A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 41.30(d) or (e).

(3) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives

information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) *Financial information exception for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2) *Examples.* (i) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) *Examples of uses of medical information consistent with the exception.* (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) *Examples of uses of medical information inconsistent with the exception.* (A) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's

physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

(e) *Specific exceptions for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit:

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or Federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is:

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that:

(*1*) Identifies the class of persons that the program is designed to benefit; and

(*2*) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) *Example of determining eligibility for a special credit program or credit assistance program.* A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer's eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) *Examples of verifying the medical purpose of the loan or the use of proceeds.* (i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) *Examples of obtaining and using medical information at the request of the consumer.* (i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer's willingness and ability to repay the requested loan to accommodate the consumer's particular circumstances, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer's application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer's application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor's otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the creditor may, but is not required to, evaluate the application using the sale of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer's request by recording the oral conversation or making a notation of the request in the consumer's file.

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or non-medical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit,

consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(5) *Example of a forbearance practice or program.* After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default. The creditor attempts to contact the consumer and speaks with the consumer's adult child, who is not the consumer's legal representative. The adult child informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

§ 41.31 Limits on redisclosure of information.

(a) *Scope.* This section applies to national banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries.

(b) *Limits on redisclosure.* If a person described in paragraph (a) of this section receives medical information about a consumer from a consumer reporting agency or its affiliate, the person must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

§ 41.32 Sharing medical information with affiliates.

(a) *Scope.* This section applies to national banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries.

(b) *In general.* The exclusions from the term ''consumer report'' in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply if a person described in paragraph (a) of this section communicates to an affiliate:

(1) Medical information;

(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or

(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c) *Exceptions.* A person described in paragraph (a) may rely on the exclusions from the term ''consumer report'' in section 603(d)(2) of the Act to communicate the information in paragraph (b) to an affiliate:

(1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) For any purpose referred to in section 1179 of HIPAA;

(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;

(5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 41.30; or

(6) As otherwise permitted by order of the OCC.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the joint preamble, Title 12, Chapter II, of the *Code of Federal Regulations* is amended as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

■ 1. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681b and 1681s; Secs. 3, 214, and 217, Pub. L. 108–159, 117 Stat. 1952.

■ 2. Amend subpart A to part 222 by adding §§ 222.2 and 222.3 to read as follows:

Subpart A—General Provisions

* * * * *

§ 222.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 222.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any company that is related by common ownership or common corporate control with another company.

(c) [Reserved]

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) *Common ownership or common corporate control* means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the

outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the Board determines; or

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (i)(1)(i) through (i)(1)(iii) of this section.

(j) [Reserved]

(k) *Medical information* means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer's residence address or e-mail address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l) *Person* means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.

■ 3. Subpart D is added to part 222 to read as follows:

Subpart D—Medical Information

§ 222.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) *Scope.* This section applies to

(1) Any of the following that participates as a creditor in a transaction—

(i) A bank that is a member of the Federal Reserve System (other than national banks) and its subsidiaries;

(ii) A branch or Agency of a foreign bank (other than Federal branches, Federal Agencies, and insured State branches of foreign banks) and its subsidiaries;

(iii) A commercial lending company owned or controlled by foreign banks;

(iv) An organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.,* and 611 *et seq.*);

(v) A bank holding company and an affiliate of such holding company (other than depository institutions and consumer reporting agencies); or

(2) Any other person that participates as a creditor in a transaction involving a person described in paragraph (a)(1) of this section.

(b) *General prohibition on obtaining or using medical information. (1) In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(2) *Definitions.* (i) *Credit* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) *Eligibility, or continued eligibility, for credit* means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c) *Rule of construction for obtaining and using unsolicited medical information.* (1) *In general.* A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 222.30(d) or (e).

(3) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) *Financial information exception for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2) *Examples.* (i) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) *Examples of uses of medical information consistent with the exception.* (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) *Examples of uses of medical information inconsistent with the exception.* (A) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

(e) *Specific exceptions for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit—

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or Federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is—

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that—

(*1*) Identifies the class of persons that the program is designed to benefit; and

(*2*) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) *Example of determining eligibility for a special credit program or credit assistance program.* A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer's eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) *Examples of verifying the medical purpose of the loan or the use of proceeds.* (i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) *Examples of obtaining and using medical information at the request of the consumer.* (i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer's willingness and ability to repay the requested loan to accommodate the consumer's particular circumstances, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer's application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer's application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor's otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the creditor may, but is not required to, evaluate the application using the sale of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer's request by recording the oral conversation or making a notation of the request in the consumer's file.

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or non-medical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit, consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(5) *Example of a forbearance practice or program.* After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default.

The creditor attempts to contact the consumer and speaks with the consumer's adult child, who is not the consumer's legal representative. The adult child informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

§ 222.31 Limits on redisclosure of information.

(a) *Scope.* This section applies to banks that are members of the Federal Reserve System (other than national banks) and their respective operating subsidiaries, branches and agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.,* and 611 *et seq.*), and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies).

(b) *Limits on redisclosure.* If a person described in paragraph (a) of this section receives medical information about a consumer from a consumer reporting agency or its affiliate, the person must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

§ 222.32 Sharing medical information with affiliates.

(a) *Scope.* This section applies to banks that are members of the Federal Reserve System (other than national banks) and their respective operating subsidiaries, branches and agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.,* and 611 *et seq.*).

(b) *In general.* The exclusions from the term ''consumer report'' in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply to a person described in paragraph (a) of this section if that person communicates to an affiliate:

(1) Medical information;

(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or

(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c) *Exceptions.* A person described in paragraph (a) of this section may rely on the exclusions from the term ''consumer report'' in section 603(d)(2) of the Act to communicate the information in paragraph (b) of this section to an affiliate:

(1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) For any purpose referred to in section 1179 of HIPAA;

(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;

(5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 222.30 of this part; or

(6) As otherwise permitted by order of the Board.

■ 4. A new part 232 is added to read as follows:

PART 232—OBTAINING AND USING MEDICAL INFORMATION IN CONNECTION WITH CREDIT (REGULATION FF)

Sec.

§ 232.1 Scope, General Prohibition and Definitions
§ 232.2 Rule of Construction for Obtaining and Using Unsolicited Medical Information
§ 232.3 Financial Information Exception for Obtaining and Using Medical Information
§ 232.4 Specific Exceptions for Obtaining and Using Medical Information

Authority: 15 U.S.C. 1681b.

§ 232.1 Scope, General Prohibition and Definitions

(a) *Scope.* This part applies to creditors, as defined in paragraph (c)(3) of this section, except for creditors that are subject to §§ 41.30, 222.30, 334.30, 571.30, or 717.30.

(b) *In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(c) *Definitions.* (1) *Consumer* means an individual.

(2) *Credit* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(3) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(4) *Eligibility, or continued eligibility, for credit* means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(i) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(ii) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(iii) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(5) *Medical information* means:

(i) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

(A) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The payment for the provision of health care to an individual.

(ii) The term does not include:

(A) The age or gender of a consumer;

(B) Demographic information about the consumer, including a consumer's residence address or e-mail address;

(C) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(D) Information that does not identify a specific consumer.

(6) *Person* means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.

§ 232.2 Rule of construction for obtaining and using unsolicited medical information.

(a) *In general.* A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.

(b) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (a) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 232.3 or § 232.4.

(c) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(1) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(2) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(3) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

§ 232.3 Financial information exception for obtaining and using medical information.

(a) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(1) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(2) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(3) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(b) *Examples.* (1) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (a)(1) of this section permits a creditor, for example, to obtain and use information about:

(i) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(ii) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(iii) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(iv) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(2) *Examples of uses of medical information consistent with the exception.* (i) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(ii) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(iii) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(3) *Examples of uses of medical information inconsistent with the exception.* (i) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(ii) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(iii) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home

equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

§ 232.4 Specific exceptions for obtaining and using medical information.

(a) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit:

(1) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(2) To comply with applicable requirements of local, state, or Federal laws;

(3) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is—

(i) Designed to meet the special needs of consumers with medical conditions; and

(ii) Established and administered pursuant to a written plan that—

(A) Identifies the class of persons that the program is designed to benefit; and

(B) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(4) To the extent necessary for purposes of fraud prevention or detection;

(5) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(6) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(7) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(8) To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(9) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(b) *Example of determining eligibility for a special credit program or credit assistance program.* A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer's eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(c) *Examples of verifying the medical purpose of the loan or the use of proceeds.* (1) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(2) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(3) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(d) *Examples of obtaining and using medical information at the request of the consumer.* (1) If a consumer applies for a loan and specifically requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer's willingness and ability to repay the requested loan to accommodate the consumer's particular circumstances, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer's application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer's application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the

creditor's otherwise applicable underwriting criteria.

(2) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan liquidating assets, the creditor may, but is not required to, evaluate the application using the sale of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer's request by recording the oral conversation or making a notation of the request in the consumer's file.

(3) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or non-medical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit, consistent with safe and sound practices, or may disregard that information.

(4) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(5) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(e) *Example of a forbearance practice or program.* After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default. The creditor attempts to contact the consumer and speaks with the consumer's adult child, who is not the consumer's legal representative. The adult child informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation amends part 334 of chapter III of title 12 of the *Code of Federal Regulations* as follows:

PART 334—FAIR CREDIT REPORTING

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

Authority: 12 U.S.C. 1819(Tenth) and 1818; 15 U.S.C. 1681b and 1681s.

■ 2. Subpart A is added to part 334 to read as follows:

Subpart A—General Provisions

§ 334.1 [Reserved]

§ 334.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 334.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any company that is related by common ownership or common corporate control with another company.

(c) [Reserved]

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) *Common ownership or common corporate control* means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the FDIC determines; or

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (i)(1)(i) through (i)(1)(iii) of this section.

(j) [Reserved]

(k) *Medical information* means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer's residence address or e-mail address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l) *Person* means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.

■ 3. Subpart D is added to part 334 to read as follows:

Subpart D—Medical Information

§ 334.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) *Scope.* This section applies to:

(1) Any of the following that participates as a creditor in a transaction:

(i) A State bank insured by the FDIC (other than members of the Federal Reserve System);

(ii) An insured State branch of a foreign bank; or

(2) Any other person that participates as a creditor in a transaction involving a person described in paragraph (a)(1) of this section.

(b) *General prohibition on obtaining or using medical information.* (1) *In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(2) *Definitions.* (i) *Credit* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) *Eligibility, or continued eligibility, for credit* means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c) *Rule of construction for obtaining and using unsolicited medical information. (1) In general. A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.*

(2) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 334.30(d) or (e).

(3) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) *Financial information exception for obtaining and using medical information.*

(1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2) *Examples.* (i) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) *Examples of uses of medical information consistent with the exception.* (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical

facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) *Examples of uses of medical information inconsistent with the exception.* (A) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

(e) *Specific exceptions for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit:

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or Federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is:

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that:

(*1*) Identifies the class of persons that the program is designed to benefit; and

(*2*) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) *Example of determining eligibility for a special credit program or credit assistance program.* A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer's eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) *Examples of verifying the medical purpose of the loan or the use of proceeds.* (i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon

that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) *Examples of obtaining and using medical information at the request of the consumer.* (i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer's willingness and ability to repay the requested loan to accommodate the consumer's particular circumstances, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer's application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer's application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor's otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the creditor may, but is not required to, evaluate the application using the sale of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer's request by recording the oral conversation or making a notation of the request in the consumer's file.

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or non-medical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit, consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(5) *Example of a forbearance practice or program.* After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default. The creditor attempts to contact the consumer and speaks with the consumer's adult child, who is not the consumer's legal representative. The adult child informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

§ 334.31 Limits on redisclosure of information.

(a) *Scope.* This section applies to State banks insured by the FDIC (other than members of the Federal Reserve System) and insured State branches of foreign banks.

(b) *Limits on redisclosure.* If a person described in paragraph (a) of this section receives medical information about a consumer from a consumer reporting agency or its affiliate, the person must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

§ 334.32 Sharing medical information with affiliates.

(a) *Scope.* This section applies to State banks insured by the FDIC (other than members of the Federal Reserve System) and insured State branches of foreign banks.

(b) *In general.* The exclusions from the term ''consumer report'' in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply if a person described in paragraph (a) of this section communicates to an affiliate—

(1) Medical information;

(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or

(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c) *Exceptions.* A person described in paragraph (a) of this section may rely on the exclusions from the term ''consumer report'' in section 603(d)(2) of the Act to communicate the information in paragraph (b) of this section to an affiliate—

(1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) For any purpose referred to in section 1179 of HIPAA;

(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;

(5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 334.30; or

(6) As otherwise permitted by order of the FDIC.

Office of Thrift Supervision

12 CFR Chapter V.

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Office of Thrift Supervision amends chapter V of title 12 of the Code of Federal Regulations as follows:

PART 571—FAIR CREDIT REPORTING

■ 1. The authority citation for part 571 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, and 1881–1884; 15 U.S.C. 1681b, 1681s, and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

Subpart A—General Provisions

■ 2. Revise § 571.1(b) to read as follows:

§ 571.1 Purpose and Scope.

* * * * *

(b) *Scope.* (1)–(3) [Reserved]

(4) The scope of Subpart D of this part is stated in §§ 571.30(a), 571.31(a), and 571.32(a) of this part.

(5)–(8) [Reserved]

(9) Subpart I of this part applies to savings associations whose deposits are insured by the Federal Deposit Insurance Corporation (and federal savings association operating subsidiaries in accordance with § 559.3(h)(1) of this chapter).

■ 3. Add § 571.2 to read as follows:

§ 571.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

■ 4. Amend § 571.3 by revising the introductory text and paragraphs (a) through (n) to read as follows:

§ 571.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any company that is related by common ownership or common corporate control with another company.

(c) [Reserved]

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f)–(h) [Reserved]

(i) *Common ownership or common corporate control* means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the OTS determines; or

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (i)(1)(i) through (i)(1)(iii) of this section.

(j) [Reserved]

(k) *Medical information* means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer's residence address or e-mail address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l) *Person* means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.

(m)–(n) [Reserved]

* * * * *

■ 5. Add subpart D to part 571 to read as follows:

Subpart D—Medical Information

§ 571.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) *Scope.* This section applies to:

(1) Any of the following that participates as a creditor in a transaction—

(i) A savings association;

(ii) A subsidiary owned in whole or in part by a savings association;

(iii) A savings and loan holding company;

(iv) A subsidiary of a savings and loan holding company other than a bank or subsidiary of a bank; or

(v) A service corporation owned in whole or in part by a savings association; or

(2) Any other person that participates as a creditor in a transaction involving a person described in paragraph (a)(1) of this section.

(b) *General prohibition on obtaining or using medical information.* (1) *In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(2) *Definitions.* (i) Credit has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) *Eligibility, or continued eligibility, for credit* means the consumer's

qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c) *Rule of construction for obtaining and using unsolicited medical information.* (1) *In general.* A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 571.30(d) or (e).

(3) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital;

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition; or

(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) *Financial information exception for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2) *Examples.* (i) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) *Examples of uses of medical information consistent with the exception.* (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) *Examples of uses of medical information inconsistent with the exception.* (A) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied

credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

(e) *Specific exceptions for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit—

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is—

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that—

(*1*) Identifies the class of persons that the program is designed to benefit; and

(*2*) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) *Example of determining eligibility for a special credit program or credit assistance program.* A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer's eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) *Examples of verifying the medical purpose of the loan or the use of proceeds.* (i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) *Examples of obtaining and using medical information at the request of the consumer.* (i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the

consumer's willingness and ability to repay the requested loan to accommodate the consumer's particular circumstances, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer's application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer's application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor's otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the creditor may, but is not required to, evaluate the application using the sale of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer's request by recording the oral conversation or making a notation of the request in the consumer's file.

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or non-medical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit, consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(5) *Example of a forbearance practice or program.* After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default. The creditor attempts to contact the consumer and speaks with the consumer's spouse, who is not the consumer's legal representative. The spouse informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

§ 571.31 Limits on redisclosure of information.

(a) *Scope.* This section applies to savings associations and federal savings association operating subsidiaries.

(b) *Limits on redisclosure.* If a person described in paragraph (a) of this section receives medical information about a consumer from a consumer reporting agency or its affiliate, the person must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

§ 571.32 Sharing medical information with affiliates.

(a) *Scope.* This section applies to savings associations and federal savings association operating subsidiaries.

(b) *In general.* The exclusions from the term ''consumer report'' in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply if a person described in paragraph (a) of this section communicates to an affiliate:

(1) Medical information;

(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or

(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c) *Exceptions.* A person described in paragraph (a) of this section may rely on the exclusions from the term ''consumer report'' in section 603(d)(2) of the Act to communicate the information in paragraph (b) of this section to an affiliate:

(1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) For any purpose referred to in section 1179 of HIPAA;

(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;

(5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 571.30; or

(6) As otherwise permitted by order of the OTS.

National Credit Union Administration

■ For the reasons set out in the preamble, 12 CFR chapter VII is amended as follows:

PART 717—FAIR CREDIT REPORTING

■ 1. Revise the authority citation for part 717 to read as follows:

Authority: 15 U.S.C. 1681a, 1681b, 1681s, 1681w, 6801 and 6805.

■ 2. Amend part 717 by revising subpart A to read as follows:

Subpart A—General Provisions

§ 717.1 Purpose.

(a) *Purpose.* The purpose of this part is to establish standards for Federal credit unions regarding consumer report information. In addition, the purpose of this part is to specify the extent to which Federal credit unions may obtain, use or share certain information. This part also contains a number of measures Federal credit unions must take to combat consumer fraud and related crimes, including identity theft.

(b) [Reserved].

§ 717.2 Examples.

The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.

§ 717.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(b) *Affiliate* means any company that is related by common ownership or common corporate control with another company. For example, an affiliate of a Federal credit union is a credit union service corporation (CUSO), as provided in 12 CFR part 712, that is controlled by the Federal credit union.

(c) [Reserved]

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Consumer* means an individual.

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) *Common ownership or common corporate control* means a relationship between two companies under which:

(1) One company has, with respect to the other company:

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of a company; or

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the NCUA determines; or

(iv) *Example.* NCUA will presume a credit union has a controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

(2) Any other person has, with respect to both companies, a relationship described in paragraphs (i)(1)(i) through (i)(1)(iii) of this section.

(j) [Reserved]

(k) *Medical information* means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer's residence address or e-mail address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

(l) *Person* means any individual, partnership, corporation, trust, estate cooperative, association, government or governmental subdivision or agency, or other entity.

■ 3. Subpart D is added to part 717 to read as follows:

Subpart D—Medical Information

§ 717.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

(a) *Scope.* This section applies to:

(1) A Federal credit union that participates as a creditor in a transaction; or

(2) Any other person that participates as a creditor in a transaction involving a person described in paragraph (a)(1) of this section.

(b) *General prohibition on obtaining or using medical information.* (1) *In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(2) *Definitions.* (i) *Credit* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) *Eligibility, or continued eligibility, for credit* means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered. The term does not include:

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c) *Rule of construction for obtaining and using unsolicited medical information.* (1) *In general.* A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 717.30(d) or (e).

(3) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

(d) *Financial information exception for obtaining and using medical*

information. (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:

(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;

(ii) The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

(2) *Examples.* (i) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:

(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;

(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;

(C) The dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment; or

(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.

(ii) *Examples of uses of medical information consistent with the exception.* (A) A consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.

(B) A consumer indicates on an application for a $200,000 mortgage loan that she receives $15,000 in long-term disability income each year from her former employer and has no other income. Annual income of $15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

(C) A consumer includes on an application for a $10,000 home equity loan that he has a $50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.

(iii) *Examples of uses of medical information inconsistent with the exception.* (A) A consumer applies for $25,000 of credit and includes on the application information about a $50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.

(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.

(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.

(e) *Specific exceptions for obtaining and using medical information.* (1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit:

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person

seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, state, or Federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is:

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that:

(*1*) Identifies the class of persons that the program is designed to benefit; and

(*2*) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; or

(ix) To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

(2) *Example of determining eligibility for a special credit program or credit assistance program.* A not-for-profit organization establishes a credit assistance program pursuant to a written plan that is designed to assist disabled veterans in purchasing homes by subsidizing the down payment for the home purchase mortgage loans of qualifying veterans. The organization works through mortgage lenders and requires mortgage lenders to obtain medical information about the disability of any consumer that seeks to qualify for the program, use that information to verify the consumer's eligibility for the program, and forward that information to the organization. A consumer who is a veteran applies to a creditor for a home purchase mortgage loan. The creditor informs the consumer about the credit assistance program for disabled veterans and the consumer seeks to qualify for the program. Assuming that the program complies with all applicable law, including applicable fair lending laws, the creditor may obtain and use medical information about the medical condition and disability, if any, of the consumer to determine whether the consumer qualifies for the credit assistance program.

(3) *Examples of verifying the medical purpose of the loan or the use of proceeds.* (i) If a consumer applies for $10,000 of credit for the purpose of financing vision correction surgery, the creditor may verify with the surgeon that the procedure will be performed. If the surgeon reports that surgery will not be performed on the consumer, the creditor may use that medical information to deny the consumer's application for credit, because the loan would not be used for the stated purpose.

(ii) If a consumer applies for $10,000 of credit for the purpose of financing cosmetic surgery, the creditor may confirm the cost of the procedure with the surgeon. If the surgeon reports that the cost of the procedure is $5,000, the creditor may use that medical information to offer the consumer only $5,000 of credit.

(iii) A creditor has an established medical loan program for financing particular elective surgical procedures. The creditor receives a loan application from a consumer requesting $10,000 of credit under the established loan program for an elective surgical procedure. The consumer indicates on the application that the purpose of the loan is to finance an elective surgical procedure not eligible for funding under the guidelines of the established loan program. The creditor may deny the consumer's application because the purpose of the loan is not for a particular procedure funded by the established loan program.

(4) *Examples of obtaining and using medical information at the request of the consumer.* (i) If a consumer applies for a loan and specifically requests that the creditor consider the consumer's medical disability at the relevant time as an explanation for adverse payment history information in his credit report, the creditor may consider such medical information in evaluating the consumer's willingness and ability to repay the requested loan to accommodate the consumer's particular circumstances, consistent with safe and sound practices. The creditor may also decline to consider such medical information to accommodate the consumer, but may evaluate the consumer's application in accordance with its otherwise applicable underwriting criteria. The creditor may not deny the consumer's application or otherwise treat the consumer less favorably because the consumer specifically requested a medical accommodation, if the creditor would have extended the credit or treated the consumer more favorably under the creditor's otherwise applicable underwriting criteria.

(ii) If a consumer applies for a loan by telephone and explains that his income has been and will continue to be interrupted on account of a medical condition and that he expects to repay the loan by liquidating assets, the creditor may, but is not required to, evaluate the application using the sale of assets as the primary source of repayment, consistent with safe and sound practices, provided that the creditor documents the consumer's request by recording the oral conversation or making a notation of the request in the consumer's file.

(iii) If a consumer applies for a loan and the application form provides a space where the consumer may provide any other information or special circumstances, whether medical or non-medical, that the consumer would like the creditor to consider in evaluating the consumer's application, the creditor may use medical information provided by the consumer in that space on that application to accommodate the consumer's application for credit, consistent with safe and sound practices, or may disregard that information.

(iv) If a consumer specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit and provides the creditor with medical information for that purpose, and the creditor determines that it needs additional information regarding the consumer's circumstances, the creditor may request, obtain, and use additional medical information about the consumer as necessary to verify the information provided by the consumer or to determine whether to make an

accommodation for the consumer. The consumer may decline to provide additional information, withdraw the request for an accommodation, and have the application considered under the creditor's otherwise applicable underwriting criteria.

(v) If a consumer completes and signs a credit application that is not for medical purpose credit and the application contains boilerplate language that routinely requests medical information from the consumer or that indicates that by applying for credit the consumer authorizes or consents to the creditor obtaining and using medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit, the consumer has not specifically requested that the creditor obtain and use medical information to accommodate the consumer's particular circumstances.

(5) *Example of a forbearance practice or program.* After an appropriate safety and soundness review, a creditor institutes a program that allows consumers who are or will be hospitalized to defer payments as needed for up to three months, without penalty, if the credit account has been open for more than one year and has not previously been in default, and the consumer provides confirming documentation at an appropriate time. A consumer is hospitalized and does not pay her bill for a particular month. This consumer has had a credit account with the creditor for more than one year and has not previously been in default. The creditor attempts to contact the consumer and speaks with the consumer's adult child, who is not the consumer's legal representative. The adult child informs the creditor that the consumer is hospitalized and is unable to pay the bill at that time. The creditor defers payments for up to three months, without penalty, for the hospitalized consumer and sends the consumer a letter confirming this practice and the date on which the next payment will be due. The creditor has obtained and used medical information to determine whether the provisions of a medically-triggered forbearance practice or program apply to a consumer.

§ 717.31 Limits on redisclosure of information

(a) *Scope.* This section applies to Federal credit unions.

(b) *Limits on redisclosure.* If a Federal credit union receives medical information about a consumer from a consumer reporting agency or its affiliate, the person must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

§ 717.32 Sharing medical information with affiliates.

(a) *Scope.* This section applies to Federal credit unions.

(b) *In general.* The exclusions from the term ''consumer report'' in section 603(d)(2) of the Act that allow the sharing of information with affiliates do not apply if a Federal credit union communicates to an affiliate:

(1) Medical information;

(2) An individualized list or description based on the payment transactions of the consumer for medical products or services; or

(3) An aggregate list of identified consumers based on payment transactions for medical products or services.

(c) *Exceptions.* A Federal credit union may rely on the exclusions from the term ''consumer report'' in section 603(d)(2) of the Act to communicate the information in paragraph (b) to an affiliate:

(1) In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);

(2) For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(3) For any purpose referred to in section 1179 of HIPAA;

(4) For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;

(5) In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with § 717.30; or

(6) As otherwise permitted by order of the NCUA.

Dated: November 8, 2005.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 14, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated at Washington, DC, this 8th day of November, 2005.

By order of the Board of Directors,

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: November 11, 2005.

By the Office of Thrift Supervision,

John M. Reich,

Director.

By the National Credit Union Administration Board on November 8, 2005.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 05–22830 Filed 11–21–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–10–P; 6720–01–P; 7535–01–P

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846
Civil Penalty Adjustments; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845 and 846

RIN 1029–AC48

Civil Penalty Adjustments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This rule adjusts the penalty amount of certain civil monetary penalties authorized by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 which requires that civil monetary penalties be adjusted for inflation at least once every four years.

DATES: *Effective Date:* November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, Room 117, South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 208–2701. E-Mail: *adevito@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
- A. The Federal Civil Penalties Inflation Adjustment Act
- B. Method of Calculation
- C. Example of a Calculation
- D. Civil Monetary Penalties Affected by This Adjustment
- E. Effect of the Rule in Federal Program States and on Indian Lands
- F. Effect of the Rule on Approved State Programs

II. Procedural Matters and Required Determinations

I. Background

A. The Federal Civil Penalties Inflation Adjustment Act

In an effort to maintain the deterrent effect of civil monetary penalties (CMPs) and promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461, note) was amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701) to require Federal agencies to regularly adjust CMPs for inflation. The Inflation Adjustment Act, as amended, requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make subsequent adjustments at least once every four years thereafter. The Office of Surface Mining Reclamation and Enforcement (we or OSM) has adjusted the CMPs authorized by SMCRA on two previous occasions, November 28, 1997 (62 FR 63274), and November 21, 2001 (66 FR 58644). To satisfy the requirement of the Inflation Adjustment Act, we are again adjusting our CMPs according to the formula set forth in the law.

Under the Inflation Adjustment Act, the inflation adjustment for a CMP is determined by increasing the CMP by the amount of the cost-of-living adjustment. The cost-of-living adjustment is defined as the percentage of each CMP by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor. See 28 U.S.C. 2461, note. In addition, the Inflation Adjustment Act specifies that any resulting increases in a CMP must be rounded according to a stated rounding formula, and apply only to violations that occur after the date the increase takes effect.

B. Method of Calculation

Since this adjustment will be effective before December 31, 2005, we must use the CPI–U for the month of June 2004. That figure is 189.7. We last reviewed and adjusted our civil monetary penalties in November 2001. Because of the rounding formula that we are required to use, only ten CMPs were adjusted in 2001. For those ten CMPs, the factor that we have used in calculating the increase for 2005 is 189.7 (the CPI–U for June 2004) divided by 178.0 (the CPI–U for June 2001). The resulting multiplier is 1.0657 (i.e., a 6.57 percent increase).

For those CMPs that were adjusted in 1997, but not in 2001, we divide 189.7 (the CPI–U for June 2004) by 160.3 (the CPI–U for June 1997). The resulting multiplier is 1.1834 (i.e., an 18.34 percent increase).

Any potential increase under this adjustment is then subject to the rounding formula set forth in section 5(a) of the Inflation Adjustment Act. Under the formula, any increase must be rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

C. Example of a Calculation

To explain the inflation adjustment calculation for the CMPs that were last adjusted in 2001, we will use the following example. Our regulations at 30 CFR 845.15(b) currently require the imposition of a civil penalty of not less than $925 for each day during which an operator fails to abate a violation within the specified abatement period contained in a notice of violation or a cessation order. Multiplying the $925 by the inflation factor of 1.0657 results in a sum of $985.77. We round the raw inflation amount ($985.77) according to the rounding formula in section 5(a) of the Inflation Adjustment Act. Since we round only the increase, we calculate the increase amount by subtracting the current penalty amount from the raw inflation adjustment. Accordingly, the increase amount for the penalty in our example is $60.77 (i.e., $985.77 minus $925.00). Under the rounding formula, if the penalty is more than $100 but less than $1,000, we round the increase to the nearest multiple of $100 (i.e., $60.77 is rounded to $100.00). Finally, we add the rounded increase to the existing penalty which results in a new § 845.15(b) penalty amount of $1,025.00 (i.e., $925.00 plus $100.00) for each day during which the failure to abate continues. For those CMPs last adjusted in 1997, the calculations would be the same but the multiplier would be 1.1834 instead of 1.0657.

D. Civil Monetary Penalties Affected by This Adjustment

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess CMPs for violations of SMCRA. OSM's regulations implementing the CMP provisions of section 518 are located in 30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14. Because of the rounding formula specified in the Inflation Adjustment Act, some of the CMPs in those sections were not adjusted in 2001 and some of them are not being adjusted in this review. When we review and adjust our CMPs in 2009, we will be required to compare the CPI–U for June 2008 with the CPI–U for the year in which each CMP was last adjusted. In

some instances that will be 1997, and in others 2001 or 2005.

E. Effect of the Rule in Federal Program States and on Indian Lands

The increase in civil monetary penalties contained in this rule will apply through cross-referencing to the following Federal program states: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for those States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. The increase in civil monetary penalties also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR 750.

F. Effect of the Rule on Approved State Programs

Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are ''no less stringent than'' those set forth in SMCRA. Our regulations at 30 CFR 840.13(a) specify that each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845. However, in a 1980 decision on OSM's regulations governing CMPs, the U.S. District Court for the District of Columbia held that because section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with SMCRA. In response to the Secretary's request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. Consequently, we cannot require that the CMP provisions contained in a State's regulatory program mirror the penalty provisions of our regulations at 30 CFR 845.14 and 845.15. As a result of the litigation, 30 CFR 840.13(a) was suspended in part on August 4,1980 (45 FR 51548).

Following publication of this final rule, we will, however, evaluate the State programs approved under section 503 of SMCRA and, based on the requirements of SMCRA, our regulations, and the court's opinion, determine any changes in those programs that will be necessary. When we determine that a particular State program provision should be amended, the particular State will be notified in accordance with the provisions of 30 CFR 732.17.

II. Procedural Matters and Required Determinations

Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. This rulemaking is consistent with the statutory authority and requirements set forth in the Inflation Adjustment Act as amended by the Debt Collection Improvement Act of 1996. The Inflation Adjustment Act requires that we adjust our CMPs once every four years and specifies the manner in which the adjustment is to be made. Accordingly, the adjustments made may be seen as ministerial, technical, and non-discretionary. For these same reasons, we believe there is good cause under 5 U.S.C. 553(d)(3) of the APA to have the rule become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

Executive Order 12866—Regulatory Planning and Review

This rule has been reviewed under the provisions of Executive Order 12866 and is not considered a significant regulatory action. This determination is based on the fact that the rule adjusts OSM's CMPs according to the formula contained in the Inflation Adjustment Act. OSM has no discretion in making the adjustments. Further, most coal mining operations subject to the rule do not engage in prohibited activities and practices, and, as a result, we believe that the aggregate economic impact of these revised regulations will be minimal, affecting only those who may engage in prohibited behavior in violation of SMCRA.

Civil penalty data from our annual reports indicates that in Fiscal Years 2001–2004, we conducted a total of 8,484 inspections on sites for which OSM is the regulatory authority, and issued a total of 157 Notices of Violation and 8 Failure-to-Abate Cessation orders. During those four years, the total CMPs collected by OSM for all violations was $231,560. If that number were adjusted for inflation using the largest inflation factor contained in this rule (1.1834 or 18.34 percent), the CMPs collected for that period would have increased by $42,468 for a total of $274,028. Consequently, the annual increase in CMPs that we might reasonably expect to collect under the revised dollar amounts contained in this rule is substantially less than the $100 million annual threshold contained in Executive Order 12866 for an economically significant rule. Based on the above, we have determined that:

a. The rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

b. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. The rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. The rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this revision 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.*). The aggregate economic impact of this rulemaking on small business entities should be minimal, affecting only those who violate the provisions of SMCRA. As previously indicated, the number of violation notices issued during the past four years was not significant when compared to the total number of Federal inspections conducted, and the estimated increase in cost to operators that will result from the inflation adjustment is not considered significant.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Will not have an annual effect on the economy of $100 million.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions because the rule does not impose new requirements on the coal mining industry or consumers.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

For purposes of compliance with the Unfunded Mandates Reform Act of 1995, this rule will not impose any obligations that individually or cumulatively would require an aggregate expenditure of $100 million or more by State, local, and Tribal governments and the private sector in any given year.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

We have reviewed this rule and determined that it is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969. In addition, we have determined that none of the ''extraordinary circumstances'' exceptions to the categorical exclusion apply. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendixes 1.9 and 2).

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule (1) does not unduly burden the judicial system and (2) meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is not considered significant under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the proposed revisions would not have substantial direct effects 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.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government.

Executive Order 13132—Federalism

This 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.''

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: November 10, 2005.

James O. Ratliff,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons set out in the preamble, 30 CFR parts 723, 724, 845 and 846 are amended as follows:

PART 723—CIVIL PENALTIES

■ 1. The authority citation for part 723 is revised to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 2. Section 723.14 is amended by revising the table to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	22
2	54
3	76
4	108
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	386
14	408
15	430
16	452
17	474
18	496
19	518
20	540
21	562
22	584
23	606
24	628
25	650
26	760
27	970
28	1,080
29	1,090
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	3,750
46	3,860
47	3,970
48	4,080
49	4,190
50	4,300
51	4,410
52	4,520
53	4,630
54	4,740
55	4,850
56	4,960
57	5,070
58	5,180
59	5,290
60	5,400
61	5,510
62	5,620
63	5,730
64	5,840
65	5,950
66	6,060
67	6,170
68	6,280
69	6,390
70	6,500

■ 3. In § 723.15, amend paragraph (b) by removing the dollar amount ''$925'' and adding in its place ''$1,025.''

PART 724—INDIVIDUAL CIVIL PENALTIES

■ 4. The authority citation for part 724 is revised to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 5. Section 724.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of Individual Civil Penalty.

* * * * *

(b) The penalty shall not exceed $6,500 for each violation. * * *

PART 845—CIVIL PENALTIES

■ 6. The authority citation for part 845 is revised to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

■ 7. Section 845.14 is amended by revising the table to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	22
2	54
3	76
4	108
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	386
14	408
15	430
16	452
17	474
18	496
19	518
20	540
21	562
22	584
23	606
24	628
25	650
26	760
27	970
28	1,080
29	1,090
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	3,750
46	3,860
47	3,970
48	4,080
49	4,190
50	4,300
51	4,410
52	4,520
53	4,630
54	4,740
55	4,850
56	4,960
57	5,070
58	5,180
59	5,290
60	5,400
61	5,510
62	5,620
63	5,730
64	5,840
65	5,950
66	6,060
67	6,170
68	6,280
69	6,390
70	6,500

■ 8. In Section 845.15, amend paragraph (b) by removing the dollar amount ''$925'' and adding in its place ''$1,025.''

PART 846—CIVIL PENALTIES

■ 9. The authority citation for part 846 is revised to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 10. Section 846.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of Individual Civil Penalty.

* * * * *

(b) The penalty shall not exceed $6,500 for each violation. * * *

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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