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

WHEN: Tuesday, December 6, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
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RESERVATIONS: (202) 741–6008

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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AK91

Prevailing Rate Systems; Redefinition of the Adams-Denver, CO, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to remove Adams County, CO, from the Adams-Denver, CO, Federal Wage System nonappropriated fund (NAF) wage area, redefine Arapahoe County, CO, from the area of application to the survey area, and change the Adams-Denver wage area's name to Arapahoe-Denver. These changes are necessary because the closure of Fitzsimons Army Medical Center in Adams County left the Adams-Denver survey area without a host activity to conduct local NAF wage surveys.

DATES: This rule is effective on December 14, 2005.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On August 22, 2005, the Office of Personnel Management (OPM) issued a proposed rule (70 FR 48899) to remove Adams County, CO, from the Adams-Denver, CO, Federal Wage System nonappropriated fund wage area, redefine Arapahoe County, CO, from the area of application to the survey area, and change the Adams-Denver wage area's name to Arapahoe-Denver. The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix D to subpart B, the wage area listing for the State of Colorado is amended by revising the listing for Adams-Denver to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Colorado

Arapahoe-Denver

Survey Area

Colorado:
Arapahoe
Denver

Area of Application. Survey area plus:

Colorado:
Mesa

* * * * *

[FR Doc. 05–22539 Filed 11–10–05; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Additional Exemption for Mutual Funds and Unit Investment Trusts Under 18 U.S.C. 208(b)(2)

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule amendment with request for comments.

SUMMARY: The Office of Government Ethics is issuing an interim rule amendment that permits Government employees to participate in certain particular matters of general applicability affecting mutual funds and unit investment trusts, notwithstanding the employees' disqualifying financial interest under 18 U.S.C. 208(a) arising from the ownership of mutual funds or unit investment trusts.

DATES: This interim regulation is effective November 14, 2005. Comments are invited and are due in writing by December 14, 2005.

ADDRESSES: You may submit comments, in writing, to OGE on this interim rule, identified by RIN 3209–AA09, by any of the following methods:

- E-Mail: *usoge@oge.gov.* Include the reference ''Interim Rule Exemption Under 18 U.S.C. 208(b)(2)'' in the subject line of the message.
- Fax: (202) 482–9237.
- Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Richard M. Thomas, Associate General Counsel.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA09, for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics; telephone: (202) 482–9300; TDD: (202) 482–9293; FAX: (202) 482–9237.

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they or certain other persons specified in the statute have a financial interest, if the particular matter would have a direct and predictable effect on that interest.

Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On August 28, 1995, the Office of Government Ethics published its first interim rule, with request for comments, promulgating certain miscellaneous exemptions under section 208(b)(2). 60 FR 44705 (August 28, 1995). On December 18, 1996, the Office of Government Ethics published a comprehensive final rule, ''Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest),'' codified at 5 CFR part 2640, which promulgated several additional exemptions and also adopted as final, with some modifications, the exemptions promulgated in the earlier interim rule. 61 FR 66829 (December 18, 1996) (final rule); 60 FR 47207 (September 11, 1995) (proposed rule). OGE subsequently has added and amended exemptions by interim rule, with request for comment, 65 FR 16511 (March 29, 2000) (adopted as final, 65 FR 47830 (August 4, 2000)), and (after a proposed rule, 65 FR 53942 (September 6, 2000)) by final rule, 67 FR 12443 (March 19, 2002).

Among the exemptions OGE has promulgated are several that exempt certain financial interests in ''mutual funds'' and ''unit investment trusts,'' as those terms are defined in § 2640.102(k) and (u). *See* 5 CFR 2640.201(a) (diversified mutual funds and unit investment trusts), 2640.102(b)(1) (non-sector holdings of sector mutual fund), 2640.201(b)(2) ($50,000 de minimis interest in sector mutual funds). As a general matter, such investment funds historically have been thought to raise fewer significant conflict of interest concerns than other types of investments, for several reasons. As OGE has noted previously, typically ''only a limited portion of the fund's assets [are] placed in the securities of any single issuer'' and usually ''an employee's interest in any one fund is only a small portion of the fund's total assets.'' 60 FR 47211 (September 11, 1995) (preamble to proposed rule). These popular investment vehicles are also subject to significant regulation by the Securities and Exchange Commission (SEC). In short, the risks and the expenses incident to such pooled investment vehicles generally pose fewer concerns that the financial interests will affect the integrity of the services of Government employees. Indeed, Congress itself has recognized the diminished conflicts potential by including certain investment funds as one of the few types of ''permitted property'' under 26 U.S.C. 1043, which allows Government employees to defer recognition of capital gains from sales to comply with conflict of interest requirements as long as the proceeds of the sale are invested in permitted property. *See* 5 CFR part 2634, subpart J (Certificates of Divestiture).

All of these existing exemptions focus on employee interests arising from the ''holdings'' of the investment funds. This is not surprising, because common sense—as well as OGE's discussions with the SEC and other agencies—indicates that the principal determinant of mutual fund value is the performance of the underlying holdings.

Since these exemptions were promulgated, however, OGE has become aware that employees at certain agencies may work on particular matters of general applicability that do not have an effect on individual fund holdings, but instead may have an effect on the mutual funds or unit investment trusts themselves. The SEC, for example, is the primary Federal regulator of investment companies and investment advisers, and the agency has advised OGE that its employees must address a variety of issues, through rulemaking and other Commission action, such as oversight of mutual fund fees and expenses, brokerage arrangements, valuation and pricing, management conflicts of interest, structural changes to the boards to address independence, etc. Similarly, some employees of the Internal Revenue Service may participate in certain taxation issues affecting regulated investment companies, such as the tax treatment of certain expenses and dividends. Difficult questions have arisen concerning whether the participation in such matters is even covered by 18 U.S.C. 208. In some cases, for example, it may be difficult to determine when such policy matters have a direct and predictable effect on the employee's financial interest in a particular investment fund. In some cases, moreover, employees may not have understood adequately the limits of existing OGE exemptions, which do not actually cover any financial interests other than those arising from the effect of Government action on the underlying holdings of funds. Given the popularity of investment funds—the SEC, for example, has advised OGE that, along with 48.1% of all American households who are invested in mutual funds directly or indirectly (*see* the Investment Company Institute (ICI) 2005 Investment Company Fact Book, Part I, Section 4, available online at *http://www.ici.org*), a significant percentage of SEC employees own mutual fund shares—it is especially important to dispel any uncertainty concerning the application of section 208 to such interests.

Therefore, OGE is promulgating a new exemption, by adding a paragraph (d) to § 2640.201 of 5 CFR, that covers interests in mutual funds and unit investment trusts other than interests arising from the holdings of such vehicles. As this action is intended, in part, to clarify the application of section 208 to such interests, the promulgation of this exemption should not be construed as an indication that any particular activity in which an employee might have participated in the past necessarily should be viewed as a violation of section 208. Moreover, it is also important to remember that interests arising from the effect of Government matters on the underlying holdings of mutual funds and unit investment trusts will continue to be addressed by the other exemptions noted above.

The new exemption is limited to particular matters of general applicability, as defined in 5 CFR 2640.102(m). This would include, for example, rules and guidance documents that address all mutual funds or a class of investment companies. The exemption does not cover particular matters involving specific parties, as defined in 5 CFR 2640.102(l), such as cases or investigations focusing on a particular investment company. Where an employee would be called upon to participate in a particular matter involving specific parties, potential conflicts should be evaluated on a case-by-case basis and may be resolved, as appropriate, through recusal, divestiture, or an individual waiver under 18 U.S.C. 208(b).

The limitation to matters of general applicability is an important part of the justification for this exemption. As in other areas, OGE has determined that the potential for financial interests in this area to affect the integrity of an employee's services is limited when the particular matter affects an entire industry or class of entities, rather than focusing on the interests and rights of a particular company or other party. *See generally* 60 FR 47210 (''The regulation generally contains more expansive exemptions for participation in 'matters of general applicability not involving specific parties' because it is less likely that an employee's integrity would be compromised by concern for his own financial interests when participating in these broader matters.''). The exemption thus would not cover those particular

matters that may be thought to pose the most acute potential for conflict, such as a proceeding with respect to a specific fund in which the employee has invested. Moreover, from discussions with various agencies, OGE has concluded that the impact of rules and other matters of general applicability on an employee's financial interest in a particular investment company is not likely to be so significant as to call into question the employee's integrity: As mentioned above, the value of an investor's interest in a fund is more directly a function of the performance of the underlying holdings rather than the effect of Government regulations on the management of the fund. Additionally, any such interests are so widely shared among the American public that employees certainly would not have a peculiar stake in such matters.

This interim rule is being published after obtaining the concurrence of the Department of Justice pursuant to section 201(c) of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on this rule.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as General Counsel of the Office of Government Ethics, I find that good cause exists for waiving the general requirements of notice of proposed rulemaking, opportunity for public comments, and 30-day delayed effective date for this interim rule amendment, and additionally that the 30-day delayed effective date does not apply because the rule grants or recognizes an exemption or relieves a restriction. These requirements are being waived because this rulemaking grants a new exemption under the applicable conflict of interest law, 18 U.S.C. 208. Moreover, delay in issuance of the rule would be contrary to the public interest because the interim rule clarifies the permissible limits of employees' official actions when certain of their financial interests may be affected, in view of questions of the type discussed above concerning the application of 18 U.S.C. 208 to employee participation in certain matters affecting mutual funds and unit investment trusts. Nonetheless, interested persons are invited to submit written comments to OGE on this interim rule, to be received on or before December 14, 2005. The Office of Government Ethics will review all comments received and consider any modifications to this rule which appear warranted before adopting the final rule on this matter.

Regulatory Flexibility Act

As General Counsel of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this interim regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this interim final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this interim rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating this interim rule amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule has also been reviewed by the Office of Management and Budget under that Executive order. Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preamble to this interim amendment notes the legal basis and benefits of, as well as the need for, the regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the Federal Government in administering this amended regulation, since it only adds to OGE's financial interests regulation a new regulatory exemption affecting certain matters of general applicability. Finally, this rulemaking is not economically significant under the Executive order and will not interfere with State, local or tribal governments.

Executive Order 12988

As General Counsel of the Office of Government Ethics, I have reviewed this interim amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: November 7, 2005.

Marilyn L. Glynn,

General Counsel, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2640 as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

■ 1. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

■ 2. Section 2640.201 is amended by adding a new paragraph (d) to read as follows:

§ 2640.201 Exemptions for interests in mutual funds, unit investments trusts, and employee benefit plans.

* * * * *

(d) *Matters affecting mutual funds and unit investment trusts.* In addition to participation in the particular matters affecting the holdings of mutual funds and unit investment trusts as permitted under paragraphs (a) and (b) of this section, an employee may participate in any particular matter of general applicability affecting a mutual fund or unit investment trust where the disqualifying financial interest arises because of the ownership of an interest

in the mutual fund or unit investment trust.

[FR Doc. 05–22476 Filed 11–10–05; 8:45 am]

BILLING CODE 6345–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments in this final rule are effective November 14, 2005. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 4.75 percent to 5.00 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 5.25 percent to 5.50 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the federal funds rate (from 3.75 percent to 4.00 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> Elevated energy prices and hurricane-related disruptions in economic activity have temporarily depressed output and employment. However, monetary policy accommodation, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity that will likely be augmented by planned rebuilding in the hurricane-affected areas. The cumulative rise in energy and other costs has the potential to add to inflation pressures; however, core inflation has been relatively low in recent months and longer-term inflation expectations remain contained.
>
> The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S. C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

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

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.00	November 1, 2005.
New York	5.00	November 1, 2005.
Philadelphia	5.00	November 1, 2005.
Cleveland	5.00	November 1, 2005.
Richmond	5.00	November 1, 2005.
Atlanta	5.00	November 1, 2005.
Chicago	5.00	November 1, 2005.
St. Louis	5.00	November 2, 2005.

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

Federal Reserve Bank	Rate	Effective
Minneapolis	5.00	November 1, 2005.
Kansas City	5.00	November 1, 2005.
Dallas	5.00	November 1, 2005.
San Francisco	5.00	November 1, 2005.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	5.50	November 1, 2005.
New York	5.50	November 1, 2005.
Philadelphia	5.50	November 1, 2005.
Cleveland	5.50	November 1, 2005.
Richmond	5.50	November 1, 2005.
Atlanta	5.50	November 1, 2005.
Chicago	5.50	November 1, 2005.
St. Louis	5.50	November 2, 2005.
Minneapolis	5.50	November 1, 2005.
Kansas City	5.50	November 1, 2005.
Dallas	5.50	November 1, 2005.
San Francisco	5.50	November 1, 2005.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 7, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–22520 Filed 11–10–05; 8:45 am]

BILLING CODE 6210–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF43

Small Business Size Standards; Gulf Opportunity Pilot Loan Program

AGENCY: Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is temporarily amending the size eligibility criteria for loan assistance provided under the ''Gulf Opportunity Pilot Loan Program,'' a one-year pilot under the 7(a) Business Loan Program. The pilot program makes available on an expedited basis 7(a) loans to small businesses located in, locating to, or relocating in disaster areas declared by the President as a result of Hurricanes Katrina and Rita and any contiguous parishes or counties. This interim final rule makes financial assistance under the pilot program available to businesses that are considered small for the purpose of SBA's 7(a) Business Loan Program and businesses considered small for the purpose of SBA's Certified Development Company Program. SBA prepared this rule as an interim final rule because its immediate implementation will facilitate the reconstruction and economic recovery of the Gulf Coast.

DATES: *Effective Date:* This regulation becomes effective on November 14, 2005.

Comment Period: Comments must be received by SBA on or before December 14, 2005.

ADDRESSES: You may submit comments identified by RIN 3245–AF43 through one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments; (2) Fax: (202) 205–6390; or (3) Mail/Hand Delivery/Courier: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles W. Thomas, Director, Office of Program Development, Office of Financial Assistance, (202) 205–6656 or *charles.thomas@sba.gov.*

SUPPLEMENTARY INFORMATION:

Gulf Opportunity Pilot Loan Program

SBA, in cooperation with lending institutions, has established a Gulf Opportunity Pilot Loan Program (GO Loan Pilot or Pilot), as a pilot under the 7(a) Business Loan Program, to expedite delivery of small business financing in the form of 7(a) loans to small businesses located in, locating to, or re-locating in Presidentially-declared disaster areas resulting from Hurricanes Katrina and Rita and any contiguous parishes or counties (SBA Policy Notice 5000–978, November 8, 2005).

The scope and magnitude of damage caused by Hurricanes Katrina and Rita is unprecedented. SBA has determined that the small businesses located in those communities have an extraordinary need for moderately-sized loans ($150,000 or less) provided on an expedited basis. To respond to these extraordinary needs of the small business community, SBA developed a pilot program, which goes beyond the Agency's traditional disaster relief efforts, to deliver financial assistance to small businesses located in, locating to, or relocating in the Presidentially-declared disaster areas resulting from Hurricanes Katrina and Rita and any contiguous parishes or counties (A list of eligible parishes and counties is located at: *http://www.sba.gov/disaster_recov/katrinafactsheets.html.*). Borrowers under this pilot must meet the geographical requirements as well as the standard eligibility requirements for the loan. The Agency structured the GO Loan Pilot to provide its full 85 percent guaranty to more strongly encourage lenders to lend to businesses in the affected communities. The GO Loan pilot will be a temporary pilot program for use in fiscal year 2006, and will expire on September 30, 2006. This interim final rule makes the expedited small business financing available to businesses that are considered small for the purpose of SBA's 7(a) Business Loan Program and businesses considered small for the purpose of SBA's Certified Development Company (CDC) Program.

Size Standard for the 7(a) Business Loan Program

The 7(a) Business Loan Program provides a range of short-term and long-term financial assistance to start-up businesses and smaller-sized small businesses in the operation, acquisition or expansion of their existing business. To qualify for an SBA-guaranteed loan under the 7(a) Business Loan Program, the size of a business concern, including its affiliates, cannot exceed the size standard for the primary industry in which it is engaged. (13 CFR 121.301(a)). More than 90 percent of 7(a) borrowers are start-ups or businesses with 50 or fewer employees.

Size Standard for SBA's Certified Development Company Program

SBA believes that the unprecedented economic needs of businesses in the Presidentially-declared disaster areas and the contiguous parishes and counties necessitate a more expansive reach of its 7(a) Business Loan Program lending in the Gulf Coast region. Therefore, SBA has decided to utilize the size eligibility criteria of the CDC Program for the GO Loan Pilot. The structure and objectives of the CDC Program target a larger segment of the small business community than the 7(a) Business Loan Program. The CDC Program is, among other things, a long-term financing tool for economic development that provides loans for major fixed assets, such as land and buildings. To be eligible for assistance under the CDC program, a business concern must meet either the size eligibility criteria of the 7(a) Business Loan Program, or have tangible net worth not in excess of $7 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of $2.5 million (13 CFR 120.301(b)). Size standards based on net worth and net income have been established to assist businesses that tend to be larger in size than businesses concerns that qualify for the 7(a) Business Loan Program, but still qualify as ''small'' for the purpose of SBA financing.

This action is not unprecedented. SBA temporarily applied the CDC size standards to the 7(a) Business Loan Program from December 1992 to March 4, 1993, but decided after public comment and further consideration not to continue them on a permanent basis because the alternate net worth and net income size standards of the CDC Program reflect the special purposes of that loan program (57 FR 62477, December 21, 1992 and 58 FR 12334, March 4, 1992). The urgent need for Federal financial assistance following Hurricanes Katrina and Rita created special circumstances warranting temporarily application the CDC size standards to businesses applying for 7(a) loans through the GO Loan Pilot.

Size Standard for the GO Loan Pilot

This rule amends the size eligibility criteria for 7(a) loans through the GO Loan Pilot to make those loans available to businesses currently considered small for the purpose of SBA's 7(a) Business Loan Program and to businesses considered small for the purpose of SBA's CDC program. Rather than modifying the definition of a small business, this interim final rule extends size eligibility for the GO Loan Pilot to any business concern that is already considered ''small'' for the purpose of one of SBA's major financial assistance programs.

The broader alternate size standards adopted for the GO Loan Pilot recognizes that many small business concerns located in the disaster areas (including those which may not qualify for the 7(a) loans under the existing framework) are experiencing financial hardship as a result of Hurricanes Katrina and Rita. Absent the recent hurricane disasters, many small businesses would continue to have adequate access to capital through traditional channels. With the destruction of large segments of the local infrastructure and the displacement of thousands of residents, the severe economic effects of the recent disasters on the Gulf Coast will extend over a period of many months, if not years. Many of these larger-sized small businesses have long-term viability, but need immediate access to capital to sustain or rebuild their operations during this critical recovery period.

SBA believes that applying the alternate net worth and net income size standards to the GO Loan Pilot provides an effective mechanism for the Federal Government to extend crucial financial assistance to this segment of the small business community that would otherwise be unavailable.

No Impact on SBA's Government Contracting Programs

SBA continues to believe that its current size standards for the 7(a) Business Loan Program and other small business assistance programs appropriately define small business concerns. As described above, the alternate net worth and net income size standards of the CDC Program are being applied on a limited basis to the specifically-tailored lending assistance program of the GO Loan Pilot. This interim rule does not change the size standards applicable to other small business programs, including size standards for Federal contracting. Therefore, this interim final rule will have no effect on existing Federal contracts, the pool of small businesses competing for Federal contracts, or the ability of Federal agencies to attain their small business contracting goals.

Justification for Publication as an Interim Final Rule

In general, SBA publishes a proposed rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act (APA) and SBA regulations. (5 U.S.C. 553 and 13 CFR 101.108). The APA provides an exception to the standard rulemaking process, however, when an agency finds good cause to adopt a rule without prior public participation. (5 U.S.C. 553(b)(3)(B)). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under those conditions, an agency may publish an interim final rule without first soliciting public comment.

In the good cause exception to standard rulemaking procedures, Congress recognized that emergencies (such as the need for Federal assistance after major disasters) might arise when an agency must issue a rule without prior public participation. On August 29, 2005, the President declared major disaster areas in Louisiana, Mississippi, and Alabama in the aftermath of Hurricane Katrina. The President also declared major disaster areas in Louisiana and Texas after Hurricane Rita destroyed more of the Gulf Coast region. These natural disasters have severely affected businesses in the declared disaster areas and contiguous parishes and counties. Small businesses in those areas have demonstrated an extraordinary need for moderately sized loans ($150,000 or less). SBA designed the GO Loan Pilot to expedite delivery of financial assistance through the 7(a) loan program to those businesses. This rule would amend the size eligibility criteria for 7(a) loans through the GO Loan Pilot to make those loans available to businesses currently considered small for the purpose of SBA's 7(a) loan program and to businesses considered small for the purpose of SBA's CDC Program. Absent this rule, expedited financial assistance through the GO Loan Pilot would only be available to businesses considered small for the purpose of SBA's 7(a) loan program. Immediate implementation of this rule,

as a component of the GO Loan Pilot, will expedite delivery of financial assistance to a greater number of businesses. Strengthening small businesses in the declared disaster areas by making financial assistance available on an expedited basis is in the best interest of the public because it will facilitate economic recovery of the Gulf Coast. Restoring economic stability in the region is essential to attracting residents and revitalizing communities that were destroyed by Hurricanes Katrina and Rita in 2005. Accordingly, SBA finds good cause to publish this rule as an interim final rule. The urgent need to expedite delivery of Federal financial assistance to the declared disaster areas makes immediate implementation of this rule in the public interest.

Furthermore, advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest because it would delay delivery of critical financial assistance to these businesses by at least four to six months. Such delay could have serious adverse affects on small businesses in the disaster areas and the public. Providing financial assistance now can help protect some small businesses that might otherwise have to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Although SBA is publishing this rule as an interim final rule, the Agency requests interested parties to submit their comments on the amended size standard. SBA must receive the comments on or before December 14, 2005. SBA may then consider these comments in making any necessary revisions to these regulations.

Justification for Immediate Effective Date of Interim Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule become effective on the same day it is published in the **Federal Register**.

The purpose of the APA provision delaying the effective date of a rule for 30 days after publication is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. In this case, however, the 30-day delay is unnecessary because this interim final rule would not require businesses, lenders or SBA to make significant changes to their current procedures when applying for, issuing, or guaranteeing loans. SBA will generally apply the policies and procedures in place for the Agency's existing SBAExpress program (although there are several substantial differences between the two programs). Lenders participating in the GO Loan Pilot are knowledgeable about these policies and procedures because they must be authorized to make 7(a) loans through SBAExpress in order to participate in the GO Loan Pilot. In addition, SBA will provide OMB-approved forms for the GO Loan Pilot, which are modeled after the SBAExpress forms.

Furthermore, SBA does not expect to receive any comments from stakeholders in the 7(a) loan or SBAExpress programs or others opposing the immediate effective date of this interim final rule. SBA believes, based on its discussions with state and local officials and interested members of the public, that there is a strong interest in immediate implementation of this rule because it will help small businesses in the disaster areas and facilitate economic recovery of the Gulf Coast region.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that this rule is a ''significant regulatory action'' under section 3(f) under Executive Order 12866. The emergency nature of this interim final rule makes timely compliance with Executive Order 12866 impracticable. SBA is currently assessing the potential economic impacts of this action.

For purposes of Executive Order 12988, SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

This regulation 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 responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Pursuant to § 608 of the Regulatory Flexibility Act (RFA), SBA is delaying the preparation of a regulatory flexibility analysis. As discussed above, SBA is promulgating this rule on an emergency basis, making timely compliance with the provisions of § 603 of the RFA impracticable.

SBA has determined that this rule does not impose any new information collection requirements from SBA that require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35. SBA currently has forms established to determine small business status. However, as a separate action, SBA will develop new forms pertaining to GO Loan Pilot loans that are modeled after the forms currently used by SBA Express lenders. SBA has sought OMB's approval for these forms on an emergency basis.

List of Subjects in 13 CFR Part 121

Loan programs—business, Disaster assistance loans, Reporting and recordkeeping requirements, Small business.

■ For reasons set forth in the preamble, amend part 121 of title 13 Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

■ 2. Amend § 121.301 by revising paragraph (a) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

(a)(1) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant business concern, including its affiliates, must not exceed the size standard for the industry in which the applicant is primarily engaged.

(2) For 7(a) Business Loans under the Gulf Opportunity Pilot Loan ''GO Loan'' Program, (applicable to business concerns located in, locating to, or re-locating in parishes or counties that were declared disaster areas by the President as a result of the 2005 Hurricanes Katrina or Rita, plus any contiguous parishes or counties), an applicant business concern must meet either the size standard under paragraph (a)(1) or the size standard under paragraph (b) of this section.

* * * * *

Dated: November 7, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–22569 Filed 11–10–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE81

Small Business Size Standards; Surety Bond Guarantee Program

AGENCY: Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending the size eligibility criteria for its Surety Bond Guarantee (SBG) Program for construction (general or special trades) or service concerns performing contracts in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. This rule amends the SBG size standard for some concerns by requiring them to meet either the size standard for the primary industry in which it, together with its affiliates, is engaged, or the current $6 million standard for the SBG Program, whichever is higher. The amended size standard applies only to construction and service concerns seeking SBA-guaranteed surety bonds for contracts or subcontracts, public or private, that are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. Surety companies with whom SBA has executed a Preferred Surety Bond (PSB) Agreement under 13 CFR part 115 will be responsible for determining eligibility in compliance with this regulation. SBA surety bond personnel will be responsible for determining eligibility in compliance with this regulation for those surety guarantees that require SBA's prior approval. SBA prepared this rule as an interim final rule because its immediate implementation will make available needed SBG Program assistance to otherwise eligible small businesses and facilitate reconstruction and recovery of the Gulf Coast and Florida.

DATES: *Effective Date:* This regulation becomes effective on November 14, 2005.

Comment Period: Comments must be received by SBA on or before December 14, 2005.

ADDRESSES: You may submit comments identified by RIN 3245–AE81 through one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments; (2) Fax: (202) 205–6390; or (3) Mail/Hand Delivery/Courier: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

SBA's Surety Bond Guarantee Program and Current Size Standards

SBA, through its Surety Bond Guarantee (SBG) Program, can guarantee bid, performance and payment bonds for contracts up to $2 million for small contractors who otherwise cannot obtain surety bonds without SBA's guarantee. SBA's guarantee gives sureties an incentive to provide bonding for eligible contractors, and thereby strengthens a contractor's ability to obtain bonding and provides greater access to contracting opportunities. A contractor applying for an SBA bond guarantee must qualify as a small business concern, in addition to meeting the surety company's bonding qualifications. Generally, under SBA's current Small Business Size Regulations, businesses in construction and service industries can qualify as small for the SBG Program if their average annual receipts, including those of their affiliates, for the last three fiscal years do not exceed $6 million (13 CFR 121.301(d)(1) and 13 CFR 121.104(c)). For all other types of business concerns, the concern must meet the size standard for the primary industry in which it, combined with its affiliates, is engaged (*see* 13 CFR 121.201 and § 121.301(d)(2)).

What This Interim Final Rule Accomplishes

This interim final rule amends the size standard applicable to a construction or service concern seeking an SBA-guaranteed surety bond by requiring the concern to meet either the size standard for the industry in which it, combined with its affiliates, is primarily engaged, or the $6 million standard, whichever is higher. The amended size standard applies only to businesses with contracts that are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma.

The small business size standards for industries in North American Industry Classification System (NAICS) Sector 23, Construction, are the following: (1) $28.5 million in average annual receipts for building, heavy, and civil engineering construction; (2) $17 million in average annual receipts for dredging; and (3) $12 million in average annual receipts for special trade contractors. Also, the existing small business size standards for service industries range from $3 million to $30 million in average annual receipts, depending on the industry. This rule would expand the pool of businesses eligible for the SBG Program to include those that are currently excluded because they exceed the $6 million SBG size standard but are considered small under existing size standards for other purposes, such as the examples in this paragraph.

The amended size standards under this interim final rule are applicable until SBA determines that it is no longer necessary to expand the availability of SBG Program assistance for reconstruction and recovery of the Presidentially-declared disaster areas resulting from Hurricanes Katrina, Rita, and Wilma. This interim final rule is a specific response to those natural disasters. SBA is soliciting comments on how long the amended size standards under this interim final rule should apply to construction and service concerns performing contracts or subcontracts in the specified disaster areas. In particular, SBA is soliciting public comments on factors that would indicate that the amended size standards are no longer necessary and the appropriate Agency action after SBA determines that the amended size standards have served the intended purpose.

SBA continues to believe that its current size standards for other small business assistance programs appropriately define small business concerns. As described above, the amended size standard for the SBG Program is being applied to a limited number of business concerns performing construction or certain service contracts in limited geographical areas—the Presidentially-declared disaster areas. This interim rule does not change the size standards applicable to other small business programs, including size standards for Federal contracting. Therefore, this interim final rule will have no effect on existing Federal contracts, the pool of small businesses competing for Federal contracts, or the ability of Federal agencies to attain their small business contracting goals.

SBA has designed this rule so it will not adversely affect any small businesses. Under this rule, a construction or service concern must meet either the size standard for its primary industry (when combined with its affiliates) or the current SBA $6 million standard, whichever is higher. This guarantees that concerns in service industries with size standards below $6 million retain their eligibility for the SBG Program. Most service industries have a $6 million size standard, although some are higher, as stated

above. There are a small number of other service industries, however, such as NAICS 541330, Engineering Services, with size standards below $6 million. Concerns operating in industries with size standards below $6 million could suffer adverse affects if the rule required them only to meet the size standard for their primary industries, lower than the size standard they now must meet for the SBG Program. That would be contrary to the rule's intent and SBA's mission and goals. Under this rule, those concerns operating in industries with size standards below $6 million remain eligible so long as their average annual receipts do not exceed the current SBG $6 million standard.

Under the Small Business Act, 15 U.S.C. 633(d) (Act), SBA has a statutory obligation to act in the public interest by establishing small business size standards to determine eligibility as a small business concern for Federal assistance. Pursuant to the Act, SBA has determined that immediate implementation of this rule is in the public interest and delaying its application would be impracticable. Failure to adopt this rule could work to the detriment of many small businesses.

Compliance With This Regulation

Surety companies with whom SBA has executed a Preferred Surety Bond (PSB) Agreement under 13 CFR part 115 will be responsible for determining eligibility in compliance with this regulation. They must determine that the construction or service contracts will be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma and sufficiently document that bonded contracts meet this eligibility requirement (A list of parishes and counties declared disaster areas by the President as a result of the hurricanes is located at: *http://www.sba.gov/disaster_recov/katrinafactsheets.html*.) They must also determine that the concern seeking this SBA-guaranteed bonding assistance meets the applicable size standard for its primary industry (when combined with its affiliates), or has average annual receipts that do not exceed $6 million, whichever size standard is higher. SBA surety bond personnel will be responsible for determining eligibility in compliance with this regulation for those surety guarantees that require SBA's prior approval and document their findings accordingly. Small businesses seeking such SBA assistance do not need to be located in the disaster areas, provided they perform the contracts in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. This rule enables these small businesses all over the country to assist other businesses and individuals that need their services.

Reasons for Limiting the Application of This Amended SBG Size Standard to Only Contracts and Subcontracts Performed in Certain Areas

In the wake of Hurricanes Katrina, Rita, and Wilma, public and private entities will spend significant amounts on recovery efforts for many years. Much of this work will be for construction and services. The Federal Government is committed to facilitating small business participation in the reconstruction and recovery efforts in the Gulf Coast region and Florida.

SBA recognizes that some construction or service contracts and subcontracts may be performed outside the Presidentially-declared disaster areas that are connected (by varying degrees) to reconstruction and recovery activities in the Gulf Coast and Florida. However, SBA limited the application of this amended SBG size standard to only contracts and subcontracts performed in Presidentially-declared disaster areas because the limit is an objective standard that sureties and SBA can apply in a consistent and fair manner. Furthermore, those contracts and subcontracts will have a direct impact on communities in the Gulf Coast and Florida because the reconstruction activities will restore the infrastructure and the service activities will serve residents of affected areas. SBA believes that amending the SBG Program's $6 million size standard for construction and service concerns seeking SBA-guarantees will expand procurement opportunities for small businesses in the construction and service industries, including local small businesses within the Presidentially-declared disaster areas, while facilitating the reconstruction of the affected areas and serving victims of Hurricanes Katrina, Rita, and Wilma.

Reasons for Using the Size Standard for the Primary Industry of the Construction or Service Concern as an Alternate Size Standard for the SBG Program

This interim final rule makes the size eligibility criteria for the SBG Program more consistent with other SBA financial assistance programs. Both SBA's 7(a) Business Loan Program and its Disaster Assistance EIDL Program determine size eligibility based on the primary industry in which the applicant, together with its affiliates, is engaged. Many small businesses affected by Hurricanes Katrina, Rita, or Wilma are seeking and will be seeking assistance through SBA's programs and obtaining Federal and non-Federal contracts. Applying similar size eligibility criteria to the SBG Program will complement the assistance these other SBA programs and Federal contracting provide.

The SBA's current Small Business Size Regulations do permit, under certain circumstances, a small construction or service contractor with annual receipts greater than $6 million to qualify as eligible for its SBG Program. This occurs only when a construction or service concern meets the size standard for the NAICS code that best describes the principal purpose of the procurement (*see* 13 CFR 121.402(a)) and when it is the prime contractor for the Federal procurement. Section 121.305 provides ''A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.'' However, this provision only applies when the concern is a prime contractor with the Federal Government. A surety bond running to another obligee, other than the Federal Government, such as a private owner, another contractor, a not-for-profit entity, or non-Federal political subdivision, is not eligible for SBA's guarantee under existing regulations unless the contractor meets the SBG $6 million size standard.

However, most SBA-guaranteed surety bonds are for contractors who are not prime contractors with the Federal Government. Applying the industry size standards to non-Federal contracts enables small construction and service concerns above $6 million in size to be equally as competitive for Federal contracts as non-Federal contracts. To limit access to the SGB Program to only concerns with average annual receipts that do not exceed $6 million, or to consider a size standard different from the industry size standards, would likely limit small business opportunities at a time when potential assistance is most needed.

Justification for Publication as an Interim Final Rule

In general, SBA publishes a proposed rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA) and SBA regulations. (5 U.S.C. 553 and 13 CFR 101.108). The APA provides an exception to the standard rulemaking process, however, when an agency finds good cause to adopt a rule without prior public participation. (5 U.S.C.

553(b)(3)(B)). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under those conditions, an agency may publish an interim final rule without first soliciting public comment.

In the good cause exception to standard rulemaking procedures, Congress recognized that emergencies (such as the need for disaster assistance) might arise when an agency must issue a rule without prior public participation. On August 29, 2005, the President declared major disaster areas in Louisiana, Mississippi, and Alabama in the aftermath of Hurricane Katrina. The President also declared major disaster areas in Louisiana and Texas after Hurricane Rita destroyed more of the Gulf Coast region and in Florida after Hurricane Wilma. These natural disasters have affected U.S. businesses in the declared disaster areas and across the Nation. Implementing this rule immediately will support the economic recovery of the Gulf Coast region and Florida and is in the best interest of the public. Construction and service concerns affected by the disaster will be more able to assist in the rebuilding and clean-up efforts, and in delivering much needed services to disaster victims. This rule will also assist small construction and service concerns not affected by the disaster to provide disaster assistance in their industries.

The Federal Government and other public and private entities are, and will be, contracting for clean-up activities, substantial reconstruction and other services in the disaster areas. However, some small construction and service concerns that had been able to obtain standard surety bonding before the disasters may now need SBA's guarantee because of their deteriorating financial conditions. This rule will permit more businesses to qualify for SBA-guaranteed surety bonds and perform contracts to help rebuild and revitalize the Gulf Coast region and Florida. Strong small business participation, in turn, will promote economic recovery in the area. In the public interest, this interim final rule would increase the number of small business participants in these efforts.

Accordingly, SBA finds good cause to publish this rule as an interim final rule because of the urgent need to speed delivery of disaster assistance to the affected area. Furthermore, advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest because it would delay delivery of critical assistance to these businesses by at least four to six months. Such delay could have serious adverse affects on small businesses and the public in the disaster area. Immediate access to SBA-guaranteed surety bonds can help protect some small businesses that might otherwise have to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Although SBA is publishing this rule as an interim final rule, the Agency requests interested parties to submit their comments to the amended size standard. In particular, SBA welcomes comments on how long the amended size standards under this interim final rule should apply to construction and service concerns performing contracts or subcontracts in the specified disaster areas, factors SBA should consider before determining that the size standards are no longer necessary, and the appropriate Agency action after SBA makes that determination. SBA must receive the comments on or before December 14, 2005. SBA may then consider these comments in making any necessary revisions to these regulations.

Justification for Immediate Effective Date of Interim Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule become effective on the same day it is published in the **Federal Register**.

The purpose of the APA provision delaying the effective date of a rule for 30 days after publication is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. In this case, however, the 30-day delay is unnecessary because this interim final rule would not require businesses, sureties, or SBA to make significant changes to their current procedures when applying for, issuing, or guaranteeing surety bonds. Sureties and SBA would begin applying the new size eligibility criteria to businesses upon publication of this interim final rule. Furthermore, SBA does not expect to receive any comments from those stakeholders in the SBG Program or others opposing the immediate effective date of this interim final rule. SBA included a proposal similar to this interim final rule in a proposed rule published on March 19, 2004 (69 FR 13129), and the Agency did not receive any comments opposing it. Moreover, SBA believes, based on its discussions with interested members of the public and the need to quickly assist hurricane victims, that there is a strong interest in immediate implementation of this rule. SBA is aware of many entities that will be assisted by the immediate adoption of this rule, many of those are small businesses directly affected by the natural disasters.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that this rule is a ''significant regulatory action'' under section 3(f) under Executive Order 12866. A general discussion of the need for this regulatory action and its potential costs and benefits follows.

1. Is There a Need for the Regulatory Action?

SBA's statutory mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) (Act) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences, as necessary.

As discussed in the above supplemental information section, this interim final rule is needed to expand eligibility for SBA's SBG Program to construction and service contractors participating in the reconstruction and recovery efforts of the Gulf Coast and Florida. The amended size standard for the SBG Program only applies to contracts that are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. This action will assist construction and service concerns located in the disaster areas and across the Nation by providing access to the SBG Program and expanding procurement opportunities for them. Disaster victims will also benefit as small businesses help to rebuild their communities.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

At this time, SBA cannot estimate the number or value of contracts, Federal or non-Federal, that small construction and service concerns will undertake to rebuild the Gulf Coast and Florida

following Hurricanes Katrina, Rita, or Wilma. SBA cannot estimate the number or value of contracts that will require surety bonds or the number or value of surety bonds that SBA will guarantee. Nor can it estimate the number of small businesses affected and not affected by the natural disasters that will participate in the SBG Program after the publication of this rule. SBA does believe, however, that expanding eligibility for its SBG Program will provide the disaster victims with significant and timely benefits when and where the greatest needs exist. For example, disaster-affected small business concerns can receive SBG Program assistance to restart their businesses. Other small business concerns may qualify to contract for more and larger surety bonds with SBA's guarantee.

SBA expects that this rule will lead to an increase in the number of SBA-guaranteed bonds. Although SBA does not anticipate loss rates changing significantly after this interim final rule becomes effective, the Government may incur additional costs to honor its guarantee on a greater volume of (but stable percentage of) defaulted bonds. SBA must honor its guarantees to the sureties on defaulted bonds for the percentage of loss that it guaranteed. Guaranteed amounts vary as follows: (1) Under the PSB Program, 70 percent (this does not change); (2) under the prior approval program, contracts valued at $100,000 or less, or on behalf of a concern owned by a socially and economically disadvantaged individual, 90 percent; and (3) for contracts in excess of $100,000 there is a gradually decreasing percentage, but the percentage does not fall below 80 percent (13 CFR 115.31). For fiscal years 2003, 2004 and 2005, SBA's loss rates were 1.8 percent, 1.3 percent and 1.6 percent, respectively. SBA expects these rates to remain stable even though the volume of SBA-guaranteed surety bonds is expected to increase.

Among businesses seeking SBA's assistance through the SBG Program, there could be additional costs for professional time required to complete applications for the surety and the SBA guarantee. Businesses also incur costs through payment of fees to participate in the SBG Program. Contractors pay a fee of $6 per $1,000 of the contract value, which the surety companies remit to SBA. (13 CFR 115.32). Although there have been no protests of a SBG Program participant's small business status in the last five years, at least, businesses could also incur legal costs associated with defending themselves against size protests. Businesses may also incur legal costs associated with compliance.

Both surety companies and SBA could incur additional administrative costs as a result of processing the increased volume of surety bond applications and applications for the SBA-guarantee. There may be additional administrative costs for PSB surety bond companies because they must document the contractors' eligibility for the SBA-guaranteed surety bond under the amended size standard. SBA anticipates, however, that these additional administrative costs will be minimal because surety companies and SBA already perform these administrative functions in the ordinary course of business.

SBA anticipates little or no adverse effects on currently defined small businesses from the increase in the number of newly eligible small businesses. Potentially, a newly defined small business could obtain a contract that a currently defined small business may have received. SBA expects those cases to be few in number because the decision to award a contract is based on many considerations. This rule enhances the environment for small construction and service concerns to compete for opportunities and strengthens their competitiveness related to contracts performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma.

For purposes of Executive Order 12988, SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

This regulation 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 responsibility among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

SBA has determined that this rule does not impose any new information collection requirements from SBA that require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35.

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) addressing the reasons for promulgating the rule; the objectives of this rule; SBA's descriptions and estimate of the number of small entities to which the rule will apply; a description of potential benefits of the rule; the projected reporting record keeping and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives considered by SBA.

(1) What Is the Reason for This Action?

As discussed in the above supplemental information section, this rule provides immediate eligibility to construction and service contractors for SBA's SBG Program under the same small business size standards that apply to all other SBG applicants. However, SBA will only guarantee surety bonds for contracts to eligible small construction or service concerns that will be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma.

Surety companies with whom SBA has executed a Preferred Surety Bond (PSB) Agreement under 13 CFR part 115 will be responsible for determining eligibility in compliance with this regulation. SBA surety bond personnel will be responsible for determining eligibility in compliance with this regulation for those surety guarantees that require SBA's prior approval.

(2) What Are the Objectives and Legal Basis for the Rule?

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA authority to establish and change size standards. SBA is using that discretionary authority to provide SBG Program assistance to those who need it and to those who can help with recovery and reconstruction.

SBA intends to provide immediate SBG Program assistance to construction and service contractors in the areas affected by Hurricanes Katrina, Rita, or Wilma. SBA intends also to provide SBG Program assistance to construction and service contractors not directly affected by the hurricanes, if their contracts or subcontracts are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma.

(3) What Is SBA's Description and Estimate of the Number of Small Entities To Which the Rule Will Apply?

This rule applies to all construction (general and special trades) and service concerns that meet the amended size standard and perform contracts that are performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. SBA is issuing this interim final rule without

estimating the number of small entities affected by this interim final rule in the interest of assisting disaster victims and providing immediate opportunities for small businesses to participate in the recovery efforts. The scope of this amended size standard is limited to contracts performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma. It is likely that most construction and service concerns that will benefit from this rule will also be located in the Gulf Coast states and Florida. SBA welcomes comments describing the types and number of small entities that this rule will affect.

(4) Description of Potential Benefits of the Rule

The most significant benefits of this rule will flow to small businesses and victims of Hurricanes Katrina, Rita, or Wilma in the Gulf Coast region of the United States and Florida. Many small construction and service contractors were not eligible for SBG assistance before this rule because their annual receipts exceeded $6 million. Under this interim final rule, they are eligible if they (together with their affiliates) meet the small business size standards for their primary industries or the current SBG $6 million standard, whichever is higher. Small construction and service contractors not directly affected by the hurricanes, but that can provide assistance, are similarly eligible now if they (together with their affiliates) meet the small business size standards for their primary industries or the current SBG $6 million standard, whichever is higher. In the end, hurricane victims will benefit the most.

SBA cannot estimate of the number or value of contracts, whether Federal or non-Federal, that they will receive. Nor can we estimate the number of small businesses affected and not affected by the disaster that will benefit. SBA does believe, however, that the increase in eligibility for its SBG Program will provide the disaster victims with significant and timely benefits. Disaster-affected small business concerns can receive SBG Program assistance to restart their businesses. Other small business concerns may qualify for more and larger contracts and surety bonds with SBA's guarantee.

This rule does not affect other than small businesses. However, entities that are not small businesses, such as not-for-profit entities, cities, towns, and other political subdivisions, can be beneficiaries of the reconstruction and services that small businesses will provide.

This rule will not provide assistance under SBA's 7(a) Guaranteed Loan Program, or any other program. This rule does not amend or otherwise modify the small business size standard for any other SBA programs, including its 7(a) Guaranteed Loan and Disaster Assistance EIDL Programs. However, it will enable businesses to obtain SBA-guaranteed surety bonding that may work hand-in-hand with SBA's Business Loan and EIDL Programs, for those that apply for and receive financial assistance under one or both of them.

(5) Will This Rule Impose Any Additional Reporting or Recordkeeping Requirements on Small Businesses?

This rule does not impose any new information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35. A new size standard does not impose any additional reporting, recordkeeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden because small business size standards neither regulate nor control business behavior.

(6) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With This Rule?

This rule affects only SBA's SBG Program. This rule does not overlap with other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with this rule.

This regulation will not impact other Federal programs that use its size standards. When a Federal agency believes that an SBA-established size standard is not appropriate for its programs, the Small Business Act and SBA's regulations allows that agency to develop different size standards, subject to the approval of the SBA Administrator. (13 CFR 121.902). For a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(7) What Alternatives Did SBA Consider?

One alternative to this rule would be to leave the SBG Program size standard unchanged. However, given the immediacy and anticipated extent of the need at hand, SBA believes this would not be in the best interests of disaster victims.

Another alternative is to issue a proposed rule. However, as stated above, that process could conceivably take at least four to six months before any final action would occur. This too, could be harmful to small businesses who may be forced to cease operations before the final rule could be published. Also, delayed reconstruction efforts would not be in the best interests of disaster victims. This interim final rule will provide immediate assistance where needed and at the same time provide opportunity for interested parties to comment on the rule.

List of Subjects in 13 CFR Part 121

Government procurement—business, Loan programs—business, Disaster assistance loans, Reporting and recordkeeping requirements, Small business.

■ For reasons set forth in the preamble, amend part 121 of title 13 Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

■ 2. Amend § 121.301 by revising paragraph (d)(1) and adding paragraph (d)(3) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

* * * * *

(d) * * *

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, its average annual receipts do not exceed $6.0 million, except as provided in § 121.301(d)(3).

(2) * * *

(3) For any contract or subcontract, public or private, to be performed in the Presidentially-declared disaster areas resulting from the 2005 Hurricanes Katrina, Rita, or Wilma, the construction (general or special trade) concern or concern performing a contract for services is small if it meets the size standard for the primary industry in

which it, together with its affiliates, is engaged, or if it meets the size standard set forth in paragraph (d)(1), whichever is higher.

* * * * *

Dated: November 8, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–22570 Filed 11–10–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 301 and 304

[Docket No.: 0507–29210–5294–03]

RIN 0610–AA63

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule; delay of effective date of certain provisions.

SUMMARY: On August 11, 2005, the Economic Development Administration (''EDA'') published an interim final rule in the **Federal Register**. On September 30, 2005, EDA published a final rule in the **Federal Register** delaying the effective date of certain provisions of the interim final rule from October 1, 2005 until November 14, 2005. The September 30, 2005 final rule also extended the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. This final rule further delays the effective date of certain provisions of the interim final rule from November 14, 2005 until January 31, 2006. This delay in effective date is necessary to provide additional time for EDA to consider comments received concerning certain provisions of the interim final rule, as well for EDA to address matters pertaining to the effective implementation of the interim final rule. Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in the interim final rule.

DATES: The effective date of the following provisions of the interim final rule is delayed from November 14, 2005 until January 31, 2006: (i) Section 304.2(c)(2), pertaining to membership of a District Organization's governing body; and (ii) Section 301.4, as the provisions of this section relate to Investment Rates for EDA Planning Investments.

FOR FURTHER INFORMATION CONTACT: Hina Shaikh, Attorney Advisor, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION: EDA published an interim final rule in the **Federal Register** (70 FR 47002) on August 11, 2005. The interim final rule reflects the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) (''PWEDA''), by the Economic Development Reauthorization Act of 2004 (Pub. L. 108–373). In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's former regulations. The interim final rule also provides for a public comment period.

On September 30, 2005, EDA published a final rule in the **Federal Register** (70 FR 57124) delaying the effective date of certain provisions in the interim final rule from October 1, 2005 until November 14, 2005. The September 30, 2005 final rule also extended the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. All other provisions of the interim final rule became effective on October 1, 2005.

This final rule delays the effective date of the provisions specified in the **DATES** section pertaining to EDA's Planning Investment Rates and District Organizations from November 14, 2005 until January 31, 2006. This delay in effective date is necessary to provide additional time for EDA to consider comments received concerning certain provisions of the interim final rule, as well for EDA to address matters pertaining to the effective implementation of the interim final rule.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this final rule is not significant for purposes of Executive Order 12866.

Congressional Review Act

This final rule is not ''major'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in Executive Order 13132 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.'' It has been determined that this final rule does not contain policies that have federalism implications.

Dated: November 7, 2005.

Benjamin Erulkar,

Chief Counsel, Economic Development Administration.

[FR Doc. 05–22546 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM335; Special Conditions No. 25–307–SC]

Special Conditions: Cessna Model 650 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Cessna Model 650 airplanes modified by Elliott Aviation Technical Product Development, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of electronic flight display systems manufactured by Universal

Avionics Systems Corporation. The electronic flight display systems perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 3, 2005. We must receive your comments by December 14, 2005.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM335, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM335. You can inspect comments in the Rules Docket weekdays, except Federal Holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 18, 2005, Elliott Aviation Technical Product Development, Inc., Quad City Airport, PO Box 100, Moline, Illinois 61266, applied for a Supplemental Type Certificate (STC) to modify Cessna Model 650 airplanes. These models are currently approved under Type Certificate No. A9NM. The Cessna Model 650 is a small transport category airplane. The Cessna Model 650 airplanes are powered by two turbine engines, with maximum takeoff weights of up to 23,000 pounds. These airplanes operate with a 2-person crew and can seat up to 13 passengers. The modification incorporates the installation of electronic flight display systems manufactured by Universal Avionics Systems Corporation. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Elliott Aviation Technical Product Development, Inc. must show that the Cessna Model 650, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A9NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the Cessna Model 650 airplanes includes part 25 of 14 CFR effective February 1, 1965, as amended by Amendment 25–1 through Amendment 25–39; §§ 25.901(c) and 25.1199 as amended by Amendment 25–1 through Amendment 25–40; §§ 25.1309 and 25.1351(d) as amended by Amendment 25–1 through Amendment 25–41; §§ 25.177, 25.255, and 25.703 as amended by Amendment 25–1 through Amendment 25–42; § 25.1326 as amended by Amendment 25–1 through Amendment 25–43; § 25.1413 as amended by Amendment 25–1 through Amendment 25–44; §§ 25.1305 and 25.1529 as amended by Amendment 25–1 through Amendment 25–54. In addition, the certification basis includes certain special conditions, exemptions, equivalent levels of safety, or later amended sections of the applicable part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 650 airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Cessna Model 650 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued under § 11.38 and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Elliott Aviation Technical Product Development, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A9NM to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

As noted earlier, the Cessna Model 650 airplanes modified by Elliott Aviation Technical Product Development, Inc. will incorporate electronic flight display systems. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Cessna Model 650 airplanes modified by Elliott Aviation Technical Product Development, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Cessna Model 650 airplanes modified by Elliott Aviation Technical Product Development, Inc. Should Elliott Aviation Technical Product Development, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A9NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Cessna Model 650 airplanes modified by Elliott Aviation Technical Product Development, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Cessna Model 650 airplanes modified by Elliott Aviation Technical Product Development, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on November 3, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22521 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22110; Directorate Identifier 2004–NM–205–AD; Amendment 39–14366; AD 2005–23–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 and A300 B4–600R Series Airplanes; and A300 F4–605R and A300 C4–605R Variant F 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 Airbus Model A300 B4–600 and A300 B4–600R series airplanes, and all Model A300 F4–605R airplanes. That AD currently requires repetitive inspections to detect cracks of certain attachment holes, installation of new fasteners, follow-on inspections or repair if necessary, and modification of the angle fittings of fuselage frame FR47. This new AD revises certain inspection thresholds and intervals. This new AD also adds inspections to detect cracks of additional attachment holes. This AD results from reports of cracks found before the inspection thresholds in the existing AD and cracks found in nearby areas not inspected by the existing AD. We are issuing this AD to prevent fatigue cracking of the forward fitting of fuselage frame FR47, which could result in reduced structural integrity of the frame.

DATES: This AD becomes effective December 19, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 19, 2005.

On July 8, 2002 (67 FR 38193, June 3, 2002), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–57–6086, dated June 6, 2000.

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

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; 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 2002–11–04, amendment 39–12765 (67 FR 38193, June 3, 2002). The existing AD applies to all Airbus Model A300 B4–600 and A300 B4–600R series airplanes, and all Model A300 F4–605R airplanes. That NPRM was published in the **Federal Register** on August 16, 2005 (70 FR 48085). That NPRM proposed to continue to require repetitive inspections to detect cracks of certain attachment holes, installation of new fasteners, follow-on inspections or repair if necessary, and modification of the angle fittings of fuselage frame FR47. That NPRM also proposed to revise certain inspection thresholds and intervals and add inspections to detect cracks of additional attachment holes.

Comments

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

Request To Clarify Inspection in Paragraph (k)

One commenter, the manufacturer, requests that we clarify the inspection specified in paragraph (k) of the NPRM. The commenter states that the inspection of hole T is not required if ''any cracking is found'' but is required only if cracking is found at hole G.

We agree with the commenter that the inspection of hole T is required only if cracking is found at hole G. As specified in the Accomplishment Instructions of Airbus Service Bulletin A300–57–6086, Revision 01, dated April 2, 2002 (which is referenced as the appropriate source of service information for accomplishing the required actions for certain airplanes), the inspection of hole T is applicable only if cracking is found at hole G. For clarity, we have revised paragraph (k) of the final rule.

Clarification of Service Bulletin References

We have revised certain references to the service bulletins for clarity. We have clarified that the actions specified in paragraphs (j) and (k) of the final rule are done in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6086, Revision 01, dated April 2, 2002. We have also clarified that the modifications specified in paragraph (l) of the final rule are done in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6050, Revision 03, dated May 31, 2001.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised 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.

Conclusion

We have carefully reviewed the available data, including the comment that has 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

The following table provides the estimated costs for U.S. operators to comply with this AD. This AD will affect about 74 airplanes of U.S. registry.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspection per Airbus Service Bulletin A300–57–6049.	13	$65	$0	$845	$62,530, per inspection cycle.
Inspection per Airbus Service Bulletin A300–57–6086.	30	65	6,637–19,091	$8,587–$21,041, per inspection cycle.	$635,438–$1,557,034, per inspection cycle.
Modification per Airbus Service Bulletin A300–57–6050.	65–365	65	3,370	$7,595–$27,095	$562,030–$2,005,030.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12765 (67 FR 38193, June 3, 2002) and by adding the following new airworthiness directive (AD):

2005–23–08 Airbus: Amendment 39–14366. Docket No. FAA–2005–22110; Directorate Identifier 2004–NM–205–AD.

Effective Date

(a) This AD becomes effective December 19, 2005.

Affected ADs

(b) This AD supersedes AD 2002–11–04.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R airplanes; and Model A300 C4–605R Variant F airplanes; certificated in any category; except airplanes on which Airbus Modification 12171 or 12249 has been accomplished or on which Airbus Service Bulletin A300–57–6069 has been accomplished.

Unsafe Condition

(d) This AD was prompted by reports of cracks found before the inspection thresholds in the existing AD and cracks found in nearby areas not inspected by the existing AD. We are issuing this AD to prevent fatigue cracking of the forward fitting of fuselage frame FR47, which could result in reduced structural integrity of the frame.

Compliance

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

Inspections for Attachment Holes on the Internal Angles of the Wing Center Box, and Corrective Action

(f) Perform a rotating probe inspection to detect cracking of the applicable attachment holes on the left and right internal angles of the wing center box in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6049, Revision 06, dated July 15, 2004. Do the inspection at the applicable time specified by paragraph 1.E.(2), Accomplishment Timescale, of Revision 06 of the service bulletin, except as required by paragraph (m) of this AD. Repeat the rotating probe inspection specified in this paragraph thereafter at intervals not to exceed the applicable interval specified in Revision 06 of the service bulletin, except that all touch-and-go landings must be counted in determining the total number of flight cycles between consecutive inspections.

(g) If no cracking is found during any inspection required by paragraph (f) of this AD: Prior to further flight, install new fasteners in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6049, Revision 06, dated July 15, 2004.

(h) If any cracking is found during any inspection required by paragraph (f) of this AD: Prior to further flight, perform applicable corrective actions (including reaming, drilling, drill-stopping holes, chamfering, performing follow-on inspections, and installing new or oversize fasteners) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6049, Revision 06, dated July 15, 2004, except as required by paragraph (n) of this AD.

Inspections for Attachment Holes in the Horizontal Flange of the Internal Corner Angle Fitting of Fuselage Frame FR47, and Corrective Action

(i) Perform a rotating probe inspection to detect cracking of the applicable attachment holes in the horizontal flange of the internal corner angle fitting of fuselage frame FR47, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6086, Revision 01, dated April 2, 2002. Do the inspection at the applicable time specified in paragraph 1.E., Compliance, of Airbus Service Bulletin A300–57–6086,

Revision 01, dated April 2, 2002, except as provided by paragraph (m) of this AD; or within 1,500 flight cycles after July 8, 2002 (the effective date of AD 2002–11–04, amendment 39–12765); whichever occurs later. Repeat the rotating probe inspection specified in this paragraph thereafter at intervals not to exceed the applicable interval specified in Airbus Service Bulletin A300–57–6086, dated June 6, 2000, except that all touch-and-go landings must be counted in determining the total number of flight cycles between consecutive inspections.

(j) If no cracking is found during any inspection required by paragraph (i) of this AD: Prior to further flight, install new fasteners in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6086, Revision 01, dated April 2, 2002.

(k) If any cracking is found during any inspection required by paragraph (i) of this AD: Prior to further flight, perform applicable corrective actions (including inspecting hole T if any cracking is found at hole G, reaming the holes, and installing oversize fasteners) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6086, Revision 01, dated April 2, 2002, except as required by paragraph (n) of this AD.

Modification of Angle Fittings of the Wing Center Box

(l) Modify the left and right internal angle fittings of the wing center box. The modification includes performing a rotating probe inspection to detect cracking, repairing cracks, cold expanding holes, and installing medium interference fitting bolts. Perform the modification in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6050, Revision 03, dated May 31, 2001; and at the applicable time specified by paragraph 1.B.(4), Accomplishment Timescale, of Airbus Service Bulletin A300–57–6050, Revision 03, dated May 31, 2001; except as required by paragraphs (m) and (n) of this AD.

Exceptions to Specifications in Service Bulletins

(m) Where the service bulletins specified in paragraphs (f), (i), and (l) of this AD specify a grace period relative to receipt of the service bulletin, this AD requires compliance within the applicable grace period following the effective date of this AD, if the threshold has been exceeded.

(n) If any crack is detected during any inspection required by this AD, and the applicable service bulletin specifies to contact the manufacturer for disposition of certain corrective actions: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Actions Accomplished According to Previous Issue of Service Bulletins

(o) Actions accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6086, dated June 6, 2000, are acceptable for compliance with the requirements of paragraph (i) of this AD.

(p) Modifications accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6050, Revision 02, dated February 10, 2000; are acceptable for compliance with the requirements of paragraph (l) of this AD.

No Reporting Requirement

(q) Although Airbus Service Bulletin A300–57–6049, Revision 06, dated July 15, 2004; and Airbus Service Bulletin A300–57–6086, Revision 01, dated April 2, 2002; specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(r)(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 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously according to AD 2002–11–04, are not approved as AMOCs with this AD.

Related Information

(s) French airworthiness directive F–2004–159, dated September 29, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(t) You must use the service bulletins listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of the service bulletins listed in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On July 8, 2002 (67 FR 38193, June 3, 2002), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–57–6086, dated June 6, 2000.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300–57–6049, excluding Appendix 01.	06	July 15, 2004.
A300–57–6050	03	May 31, 2001.
A300–57–6086	Original	June 6, 2000.
A300–57–6086	01	April 2, 2002.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300–57–6049, excluding Appendix 01.	06	July 15, 2004.
A300–57–6050	03	May 31, 2001.
A300–57–6086	01	April 2, 2002.

Airbus Service Bulletin A300–57–6050, Revision 03, dated May 31, 2001, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1, 4, 10A–11, 75–76	03	May 31, 2001.
2, 8–9, 17–32, 41–42, 57–58, 61–63, 77	02	February 10, 2000.
3, 5–7, 10, 12, 33–34, 37–38, 47, 59–60	01	May 31, 1999.
13–16, 35–36, 39–40, 43–46, 48–56, 64–74	Original	September 9, 1994.

Issued in Renton, Washington, on October 31, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22216 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20947; Directorate Identifier 2004–NM–245–AD; Amendment 39–14364; AD 2005–23–06]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F Airplanes Modified by Supplemental Type Certificate SA1731SW, SA1669SW, or SA1670SW

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes. This AD requires removing the thrust reverser accumulator, and making the thrust reverser hydraulic system and the thrust reversers inoperable. This AD results from reports of the failure of two thrust reverser accumulators. We are issuing this AD to prevent failure of the thrust reverser accumulators, due to fatigue cracking on the female threads, which could result in the loss of hydraulic power and damage to the surrounding airplane structure.

DATES: This AD becomes effective December 19, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 19, 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 The Nordam Group, Nacelle/Thrust Reverser Systems Division, 6911 North Whirlpool Drive, Tulsa, Oklahoma 74117, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Jim Rankin, Aerospace Engineer, Special Certification Office, ASW–190, FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298; telephone (817) 222–5138; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes. That NPRM was published in the **Federal Register** on April 14, 2005 (70 FR 19718). That NPRM proposed to require removing the thrust reverser accumulator, and making the thrust reverser hydraulic system and the thrust reversers inoperable.

Comments

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

Request To Withdraw NPRM

One commenter does not support the NPRM. The commenter asserts that deactivating the thrust reversers will cause more accidents, especially under wet or winter runway conditions. The commenter also asserts that one in-flight failure of a thrust reverser does not justify the NPRM given the countless safe operations without thrust reverser failures. The commenter states that ''[the FAA] also [has] not looked or measured the increase of accidents that will be caused by this [NPRM].'' As further justification for not supporting the NPRM, the commenter states that the NPRM does not account for the cost of brake and tire wear that would be incurred if the thrust reversers are deactivated. We infer that the commenter would like us to withdraw the NPRM.

We do not agree, since we have determined that an unsafe condition exists, and that the interim actions of this AD are necessary to ensure the continued safety of the affected fleet. The one thrust reverser failure on a Learjet Model 25B airplane that occurred in flight led to an emergency landing. A second failure occurred during proof testing and resulted in injury to a person. We acknowledge the commenter's concern with deactivating the thrust reversers; however, the affected Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes were not originally type certificated with thrust reversers installed. Furthermore, we estimate that half of these Learjet model airplanes in service today are operating without thrust reversers. Therefore, an increase in accidents due to deactivation of the affected thrust reversers is unlikely.

Regarding the cost impact of this AD, we point out that the economic analysis of the AD is limited only to the cost of actions actually required by the AD; it does not include incidental costs. In any case, we have determined that direct and incidental costs are outweighed by the safety benefits of this AD. Therefore, no change to this AD is necessary in this regard.

Request To Revise Requirements of NPRM

Two commenters request that we revise the NPRM to require repetitive nondestructive testing or x-ray inspections of the thrust reverser accumulator, instead of proposing to deactivate the thrust reversers. One of the commenters states that inspection of the suspected point of failure (the female threads of the accumulator) would be sufficient to prevent failure of the thrust reverser accumulator. The commenter suggests that deactivation of the thrust reversers could be required if damage is found during an inspection.

We do not agree, since the commenters provide no technical justification for revising the requirements of this AD. The history of crack growth on the affected thrust reversers is unknown. In addition, there have been no studies done to determine an appropriate inspection interval for providing an acceptable level of safety. As stated in the NPRM, the parts manufacturer currently is developing a modification that will address the unsafe condition of this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking. Therefore no change to this AD is necessary in this regard.

Request To Expand Applicability

One commenter, the parts manufacturer, requests that we delete reference to Supplemental Type Certificates (STCs) SA1731SW, SA1669SW, and SA1670SW from the

applicability of the NPRM. The commenter states this change will ensure that the NPRM is also applicable to other Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes equipped with the affected thrust reverser accumulators. As an example, the commenter mentions that Model 24, 24B, 24D, 24F, 25, 25B, 25C, and 25D airplanes modified by STC SA944NW are also equipped with the affected thrust reverser accumulators, but are not included in the applicability of the NPRM.

We do not agree. We have determined that Model 24, 24B, 24D, 24F, 25, 25B, 25C, and 25D airplanes modified by STC SA944NW do not need to be added to the applicability of this AD. The thrust reverser accumulator is an optional installation for STC SA944NW. The current STC holder did not purchase the thrust reverser data, and the thrust reverser accumulators cannot be installed without using the STCs identified in this AD. Furthermore, deleting reference to STCs SA1731SW, SA1669SW, and SA1670SW would expand the applicability of this AD, creating further delay in addressing the unsafe condition. If we become aware of affected thrust reverser accumulators equipped on other Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes, we will consider further rulemaking.

Operators should note that on August 12, 2005 we issued an NPRM, Docket No. FAA–2005–22169 (70 FR 49210, August 23, 2005), related to the unsafe condition of this AD. The related NPRM proposes to require replacement of the spherical accumulator for the main hydraulic system with a new cylindrical accumulator. The related NPRM is applicable to certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F airplanes. The spherical accumulator used for the main airplane hydraulic system on those Learjet model airplanes is similar to the spherical accumulator used for the thrust reverser hydraulic system addressed in this AD. The actions proposed in the related NPRM are intended to prevent failure of the spherical accumulator for the main hydraulic system, due to fatigue cracking on the threads, which could result in the loss of hydraulic power, damage to the surrounding airplane structure, and loss of airplane control. The failure of the accumulator could also result in injury to any persons in the surrounding area. The loss of hydraulic fluid could also leak onto a potential source of ignition and result in a consequent fire.

Request To Include Final Action

One commenter recommends adding information about the final action being developed under FAA project ST8103SC–T. The commenter states that referencing the proposed STC number would provide information to operators about the final action.

We do not agree. As stated in an earlier comment, we may consider additional rulemaking once a modification is developed, approved, and available. Therefore no change to this AD is necessary in this regard.

Request To Eliminate Repetitive Inspections of the Thrust Reverser

One commenter requests that we eliminate repetitive inspections of the thrust reverser (at intervals of 300 and 600 flight hours). The commenter suggests these inspections are unnecessary if a thrust reverser is deactivated.

We do not agree because this AD and the referenced service bulletin do not require repetitive inspections of the thrust reverser. We infer that the commenter is referring to the repetitive inspections of the thrust reversers specified in The Nordam Group TR3000 Service Manual DHP–G–25–1. These repetitive inspections are part of the maintenance program for STCs SA1731SW, SA1669SW, and SA1670SW. After making the thrust reverser accumulator inoperable, operators should do repetitive general visual inspections of the thrust reverser system for cracking, corrosion, loose or missing fasteners, etc., to ensure the structural integrity of the thrust reverser. (The Nordam Group has issued Temporary Revision 78–04, dated July 8, 2005, to the TR3000 Service Manual to add these new repetitive inspections.) Operational checks should no longer be done after the thrust reverser accumulator is inoperable. Operators may contact the Manager, Special Certification Office, ASW–190, Rotorcraft Directorate, for the revised maintenance inspection program. No change to this AD is necessary in this regard.

Change to This AD

In paragraph (c) of the NPRM, we inadvertently omitted the word ''accumulators'' where the applicability identifies the part numbers of the affected thrust reverser accumulators. We have added ''accumulators'' before the affected part numbers in paragraph (c) of this AD to clarify the applicability.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised 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.

Conclusion

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

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this proposed AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 321 airplanes of the affected design in the worldwide fleet. This AD affects about 255 airplanes of U.S. registry. The actions in this AD take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $33,150, or $130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–23–06 Learjet: Amendment 39–14364. Docket No. FAA–2005–20947; Directorate Identifier 2004–NM–245–AD.

Effective Date

(a) This AD becomes effective December 19, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes; certificated in any category; modified by Supplemental Type Certificate SA1731SW, SA1669SW, or SA1670SW; equipped with Nordam (formerly Dee Howard Company) thrust reverser accumulators having part number (P/N) 25–0570–127–1, –3, –7, –13, or –17.

Unsafe Condition

(d) This AD was prompted by reports of the failure of two thrust reverser accumulators. We are issuing this AD to prevent failure of the thrust reverser accumulators, due to fatigue cracking on the female threads, which could result in the loss of hydraulic power and damage to the surrounding airplane structure.

Compliance

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

Remove Thrust Reverser Accumulator

(f) Within 60 days after the effective date of this AD, remove the thrust reverser accumulator, and make the thrust reverser hydraulic system and the thrust reversers inoperable, by doing all of the actions specified in the Accomplishment Instructions of The Nordam Group Alert Service Bulletin A3000 78–21, dated November 25, 2002. Where there are differences between the Master Minimum Equipment List and the AD, the AD prevails. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(g) As of the effective date of this AD, no person may install a thrust reverser accumulator having P/N 25–0570–127–1, –3, –7, –13, or –17 on any airplane.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Special Certification Office, Rotorcraft 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 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(i) You must use The Nordam Group Alert Service Bulletin A3000 78–21, dated November 25, 2002, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact The Nordam Group, Nacelle/Thrust Reverser Systems Division, 6911 North Whirlpool Drive, Tulsa, Oklahoma 74117, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington on October 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22215 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22255; Directorate Identifier 2005–NM–106–AD; Amendment 39–14362; AD 2005–23–04]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Saab Model SAAB 2000 airplanes. This AD requires modifying the manual feather-and-unfeather system for the propellers to make the design of the system more robust. This AD results from reports of in-flight engine shutdown caused by uncommanded operation of the feather pump of the propeller. We are issuing this AD to prevent uncommanded feathering of the propeller, which could result in the shutdown of an engine during flight and consequent reduced controllability of the airplane.

DATES: This AD becomes effective December 19, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 19, 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Saab Model SAAB 2000 airplanes. That NPRM was published in the **Federal Register** on September 1, 2005 (70 FR 52041). That NPRM proposed to require modifying the manual feather-and-unfeather system for the propellers to make the design of the system more robust.

Comments

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

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

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

Costs of Compliance

This AD will affect about 3 airplanes of U.S. registry. The actions will take about 50 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $13,571 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $50,463, or $16,821 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–23–04 Saab Aircraft AB: Amendment 39–14362. Docket No. FAA–2005–22255; Directorate Identifier 2005–NM–106–AD.

Effective Date

(a) This AD becomes effective December 19, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model SAAB 2000 airplanes, certificated in any category, serial numbers –004 through –063 inclusive.

Unsafe Condition

(d) This AD results from reports of in-flight engine shutdown caused by uncommanded operation of the feather pump of the propeller. We are issuing this AD to prevent uncommanded feathering of the propeller, which could result in the shutdown of an engine during flight and consequent reduced controllability of the airplane.

Compliance

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

Modification

(f) Within 12 months after the effective date of this AD, modify the manual feather-and-unfeather system of the propellers by doing all actions specified in the Accomplishment Instructions of Saab Service Bulletin 2000–61–006, Revision 01, dated February 17, 2005.

Actions Accomplished Previously

(g) A modification accomplished before the effective date of this AD in accordance with Saab Service Bulletin 2000–61–006, dated December 20, 2004, is acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) Swedish airworthiness directive 1–198, dated February 14, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Saab Service Bulletin 2000–61–006, Revision 01, dated February 17, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Saab Aircraft AB, SAAB Aircraft

Product Support, S–581.88, Linköping, Sweden, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on October 27, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22218 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19863; Directorate Identifier 2003–NM–29–AD; Amendment 39–14363; AD 2005–23–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–100, A320–200, and A321–100 and –200 Series 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 certain Airbus Model A319–100, A320–200, and A321–100 and –200 series airplanes. That AD currently requires modification of the telescopic girt bar of the escape slide/raft assembly, and follow-on actions. This new AD requires a new modification of the telescopic girt bar and the installation of placards on the modified girt bars, which terminates the repetitive functional tests required by the existing AD. This AD results from development of a new, improved modification. We are issuing this AD to prevent failure of the escape slide/raft to deploy correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers.

DATES: This AD becomes effective December 19, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 19, 2005.

On August 31, 2001 (66 FR 42939, August 16, 2001), the Director of the Federal Register approved the incorporation by reference of Airbus Industrie All Operators Telex A320–52A1111, Revision 01, dated July 23, 2001, including Airbus Industrie Technical Disposition 959.1492/01, Issue C, dated July 17, 2001.

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

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; 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 supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2001–16–14, amendment 39–12383 (66 FR 42939, August 16, 2001). The existing AD applies to certain Airbus Model A319, A320, and A321 series airplanes. That supplemental NPRM was published in the **Federal Register** on July 21, 2005 (70 FR 42005). That supplemental NPRM proposed to mandate the installation of placards on the modified girt bars, which terminates the repetitive functional tests required by the existing AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the additional comment that has been received on the supplemental NPRM. The commenter supports the supplemental NPRM.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

We have carefully reviewed the available data, including the comment that has been received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 517 airplanes of U.S. registry.

The modification that is required by AD 2001–16–14 and retained in this AD takes about 7 work hours per airplane, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the estimated cost of the currently required modification for U.S. operators is $235,235, or $455 per airplane.

The functional test that is required by AD 2001–16–14 and retained in this AD takes about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required functional test for U.S. operators is $33,605, or $65 per airplane, per test cycle.

For airplanes that have not been modified in accordance with AD 2001–16–14: The new modification (including the new placard installation) takes about 17 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost about $5,130 per airplane. Based on these figures, the estimated cost of the new modification specified in this AD is $6,235 per airplane.

For airplanes that have been modified in accordance with AD 2001–16–14: The new modification (including the new placard installation) takes about 21 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost about $5,130 per airplane. Based on these figures, the estimated cost of the new modification specified in this AD is $6,495 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12383 (66 FR 42939, August 16, 2001) and by adding the following new airworthiness directive (AD):

2005–23–05 Airbus: Amendment 39–14363. Docket No. FAA–2004–19863; Directorate Identifier 2003–NM–29–AD.

Effective Date

(a) This AD becomes effective December 19, 2005.

Affected ADs

(b) This AD supersedes AD 2001–16–14.

Applicability

(c) This AD applies to Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–211, –212, –214, –231, –232, and –233; and A321–111, –112, –131, –211, and –231 airplanes; certificated in any category; equipped with telescopic girt bars of the escape slide/raft assembly installed per Airbus Modification 20234, or Airbus Service Bulletin A320–25–1055 or A320–25–1218 in service; except those airplanes with Airbus Modification 31708.

Unsafe Condition

(d) This AD was prompted by development of a new, improved modification of the telescopic girt bar of the escape slide/raft assembly. We are issuing this AD to prevent failure of the escape slide/raft to deploy correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers.

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.

Restatement of Requirements of AD 2001–16–14

Modification/Follow-On Actions

(f) For airplanes listed in Airbus Industrie All Operators Telex (AOT) A320–52A1111, Revision 01, dated July 23, 2001: Within 1,500 flight hours after August 31, 2001 (the effective date of AD 2001–16–14); except as provided by paragraph (h) of this AD, modify the telescopic girt bar of the escape slide/raft assembly installed on all passenger and crew doors and do a functional test to ensure the girt bar does not retract, per Airbus Industrie AOT A320–52A1111, Revision 01, dated July 23, 2001.

(1) If the girt bar retracts, before further flight, replace any discrepant parts and do another functional test to ensure the girt bar does not retract, per the AOT. Repeat the functional test thereafter at intervals not to exceed 18 months until paragraph (g) of this AD is accomplished.

(2) If the girt bar does not retract, repeat the functional test thereafter at intervals not to exceed 18 months.

Note 1: Modification and follow-on actions accomplished prior to the effective date of this AD per Airbus Industrie AOT A320–52A1111, dated July 5, 2001, are considered acceptable for compliance with the applicable actions specified in this amendment.

New Requirements of This AD

Modification

(g) Within 20 months after the effective date of this AD: Accomplish the actions specified in paragraphs (g)(1) and (g)(2) of this AD by doing all the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–52–1112, Revision 05, dated June 25, 2004. Accomplishing these actions terminates the repetitive functional tests required by paragraph (f) of this AD.

(1) Modify the telescopic girt bar of the escape slide/raft assembly.

(2) Install a placard on each modified girt bar.

(h) For airplanes on which the modification of the telescopic girt bar required by paragraph (g)(1) of this AD is accomplished within the compliance time specified in paragraph (f) of this AD, accomplishing the modification required by paragraph (f) is not required.

Modifications Accomplished According to Previous Issues of Service Bulletin

(i) Modification of the telescopic girt bar accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A320–52–1112, dated January 16, 2002; Revision 01, dated April 3, 2002; Revision 02, dated September 6, 2002; Revision 03, dated June 27, 2003; or Revision 04, dated November 12, 2003; is considered acceptable for compliance with the modification of the telescopic girt bar required by paragraph (g)(1) of this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install on any airplane a telescopic girt bar of the escape slide/raft assembly unless it has been modified as required by paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs approved previously in accordance with AD 2001–16–14 are approved as AMOCs with paragraph (f) of this AD.

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

Related Information

(l) French airworthiness directives 2002–637(B) R1, dated April 16, 2003, and F–2005–057, dated April 13, 2005, also address the subject of this AD.

Material Incorporated by Reference

(m) You must use Airbus Service Bulletin A320–52–1112, Revision 05, dated June 25, 2004; and Airbus Industrie All Operators Telex A320–52A1111, Revision 01, dated July 23, 2001, including Airbus Industrie

Technical Disposition 959.1492/01, Issue C, dated July 17, 2001; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A320–52–1112, Revision 05, dated June 25, 2004; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On August 31, 2001 (66 FR 42939, August 16, 2001), the Director of the Federal Register approved the incorporation by reference of Airbus Industrie All Operators Telex A320–52A1111, Revision 01, dated July 23, 2001, including Airbus Industrie Technical Disposition 959.1492/01, Issue C, dated July 17, 2001.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 25, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22217 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22881; Directorate Identifier 2005–NM–202–AD; Amendment 39–14368; AD 2005–23–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and A330–300 Series Airplanes; and Model A340–200 and A340–300 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A330–200 and A330–300 series airplanes; and Model A340–200 and A340–300 series airplanes. This AD requires an accelerated schedule of repetitive testing of the elevator servo control loops, and corrective actions if necessary. This AD results from reports of failed elevator servo controls due to broken guides. We are issuing this AD to ensure proper functioning of the elevator servo controls. Failure of the elevator servo controls during certain phases of takeoff could result in an unannounced loss of elevator control and consequent reduced controllability of the airplane.

DATES: This AD becomes effective November 29, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 29, 2005.

We must receive comments on this AD by January 13, 2006.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A330–200 and A330–300 series airplanes; and Model A340–200 and A340–300 series airplanes. The DGAC advises that it has received reports of elevator servo control removals resulting from the ''F/CTL ELEV SERVO FAULT'' warning. During repair, some of these servo controls installed at the active position (2CS1) (Left Green) or (2CS2) (Right Green) were found with a broken guide. The broken guides resulted in the inability for the affected servo controls to change their operating mode, leading to ''F/CTL ELEV SERVO FAULT'' warnings. Results of the investigation revealed a fatigue rupture inside the servo control induced by successive pressure cycles and resulting in a progressive decrease of the tightening torque of the plug to be the root cause of the broken guides.

Each elevator is equipped with two servo controls having three operating modes: active mode, damping mode, and centering mode. In normal operating conditions, each elevator is actuated by one servo control in active mode, while the other is in damping mode. The mode change from active to damping is achieved by a mode-selector spool valve installed inside each servo control. The position of this spool valve is commanded by a rod that slides through a guide. A broken guide could result in the inability for the affected servo control to change its operating mode.

Failure of the elevator servo controls during certain phases of takeoff, if not corrected, could result in an unannounced loss of elevator control and consequent reduced controllability of the airplane.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A330–27A3138, Revision 01, dated October 3, 2005, for Model A330–200 and –300 series airplanes; and AOT A340–27A4137, Revision 01, dated October 3, 2005, for Model A340–200 and –300 series airplanes. The AOTs describe procedures for repetitive tests of the elevator servo-loops and corrective actions if the test fails. If the test fails, the AOTs specify performing the associated troubleshooting manual tasks and applicable corrective actions. The corrective actions include repairing wiring, replacing certain solenoid valves, replacing certain mode selector valve transducers, and replacing the elevator servo control, among other actions, depending on the fault message displayed. The AOTs also specify reporting failed tests and sending replaced servo controls to Airbus.

The DGAC mandated the AOTs and issued French airworthiness directive UF–2005–171, dated October 3, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section

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

Therefore, we are issuing this AD to ensure proper functioning of the elevator servo controls. Failure of the elevator servo controls during certain phases of takeoff could result in an unannounced loss of elevator control and consequent reduced controllability of the airplane. This AD requires accomplishing the actions specified in the service information described previously.

This AD also requires that operators report results of failed servo-loop tests to Airbus. These required failed-test reports will be instrumental in ensuring that as much information as possible is gathered regarding the nature of the fatigue rupture causing the broken guides and that the new design of servo control to be used in a terminating modification, which the manufacturer is currently developing, will adequately address the subject unsafe condition.

Clarification of Corrective Actions Specified in the French Airworthiness Directive

The French airworthiness directive does not define what ''corrective actions'' should be taken when an elevator servo-loop test fails. We have verified that those corrective actions are the actions described previously under ''Relevant Service Information.''

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22881; Directorate Identifier 2005–NM–202–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–23–10 Airbus: Amendment 39–14368. Docket No. FAA–2005–22881; Directorate Identifier 2005–NM–202–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343

airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of elevator servo control failures due to broken guides. We are issuing this AD to ensure proper functioning of the elevator servo controls. Failure of the elevator servo controls during certain phases of takeoff could result in an unannounced loss of elevator control and consequent reduced controllability of the airplane.

Compliance

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

Service Information

(f) The term ''AOT,'' as used in this AD, means section 4.2. ''Description'' of the following service information, as applicable:

(1) For Model A330–200 and –300 series airplanes: Airbus All Operators Telex A330–27A3138, Revision 01, dated October 3, 2005; and

(2) For Model A340–200 and –300 series airplanes: Airbus All Operators Telex A340–27A4137, Revision 01, dated October 3, 2005.

Initial and Repetitive Elevator Servo-Loop Tests

(g) Within 200 flight hours after the effective date of this AD: Test the elevator servo-loops, in accordance with the AOT. If the test of the elevator servo-loops passes, repeat the test at intervals not to exceed 140 flight hours or 8 days, whichever occurs first.

Failed Tests

(h) If any test of the elevator servo-loops required by paragraph (g) of this AD fails: Before further flight, troubleshoot the cause of the test failure, and do the applicable corrective actions; in accordance with the AOT. Thereafter, repeat the test at the times specified in paragraph (g) of this AD.

Reporting Requirement

(i) Following each test required by paragraph (g) of this AD, submit a report of the findings of only failed elevator servo-loop tests to Airbus Customer Services, Engineering and Technical Support, Attention: Mr. J. Laurent, SEE53, fax +33/(0)5.61.93.44.25; at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the description of the failure experienced during the test, the identified cause of the failure, and the number of flight hours and flight cycles on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the test was done after the effective date of this AD: Submit the report within 10 days after the test.

(2) If the test was done prior to the effective date of this AD: Submit the report within 10 days after the effective date 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.

Related Information

(k) French airworthiness directive UF–2005–171, dated October 3, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus All Operators Telex A330–27A3138, Revision 01, dated October 3, 2005; or Airbus All Operators Telex A340–27A4137, Revision 01, dated October 3, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 31, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22213 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22120; Directorate Identifier 2004–NM–92–AD; Amendment 39–14360; AD 2005–23–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–100 Series Airplanes, Model A320–111 Airplanes, Model A320–200 Series Airplanes, and Model A321–100 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A319–100 series airplanes, Model A320–111 airplanes, Model A320–200 series airplanes, and Model A321–100 series airplanes equipped with any additional center tank (ACT). This AD requires identifying the part number of the ACT and, for certain ACTs, replacing the outer ACT manhole cover and seal. This AD results from reports of an ACT fuel transfer failure due to air leakage around the seal of the outer manhole covers of the ACTs. We are issuing this AD to prevent this leakage, which could result in fuel or fuel vapor leaking into the cargo compartment, and consequent increased risk of a fire in the cargo compartment.

DATES: This AD becomes effective December 19, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 19, 2005.

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

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A319–100 series airplanes, Model A320–111 airplanes, Model A320–200 series

airplanes, and Model A321–100 series airplanes equipped with certain additional center tanks (ACT). That NPRM was published in the **Federal Register** on August 17, 2005 (70 FR 48336). That NPRM proposed to require identifying the part number (P/N) of the ACT and, for certain ACTs, replacing the outer ACT manhole cover and seal.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment received. The commenter supports the NPRM.

Additional Service Bulletin Information

After the NPRM was issued Airbus released Revision 02 of service bulletin A321–28–1105, dated March 11, 2005. We have reviewed it, and it is substantially similar to Revision 01, which was referred to in the NPRM as the acceptable source of service information. We have revised paragraph (g) of this AD to refer to Revision 02 of the service bulletin as the acceptable source of service information, and to give credit for doing Revision 01 before the effective date of this AD.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised 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.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average hourly labor rate	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
P/N identification	1	$65	$0	$65	28	$1,820

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–23–02 Airbus: Amendment 39–14360. Docket No. FAA–2005–22120; Directorate Identifier 2004–NM–92–AD.

Effective Date

(a) This AD becomes effective December 19, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes; certificated in any category; which are equipped with any additional center tank (ACT).

Unsafe Condition

(d) This AD was prompted by reports of an ACT fuel transfer failure due to air leakage around the seal of the outer manhole covers of the ACTs. We are requiring this AD to prevent this leakage, which could result in fuel or fuel vapor leaking into the cargo compartment, and consequent increased risk of a fire in the cargo compartment.

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.

Part Number Identification

(f) Within 30 days (for Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes) or 12 months (for Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes) after the effective date of this AD: Determine whether the part number (P/N) of each ACT installed on the airplane is included in Table 1 of this AD. If no ACT installed on the airplane has a P/N included

in Table 1 of this AD, no further work is required by this paragraph.

TABLE 1.—AFFECTED ACT P/NS

D2827091100000
D2827091100200
D2827091100600
D2827091300000
D2827091300200
D2827091300400
D2827105100000
D2827105100200
D2827105100400
D2827105200000
D2827105200200
D2827105200400
D2827105300000
D2827105300200
D2827105300400
D2827105400000
D2827105400200
D2827105400400
D2827105400600
D2827105400800
D2827105500000
D2827105500200
D2827105500400
D2827105600000
D2827105600200
D2827105600400
D2827107500000
D2827107500200

Manhole Cover/Seal Replacement

(g) Within 30 days (for Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes) or 12 months (for Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes) after the effective date of this AD: For each ACT P/N listed in Table 1 of this AD: Before further flight, replace the outer ACT manhole cover with a reinforced manhole cover and replace the outer manhole cover seal with a new seal, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1105, Revision 02, dated March 11, 2005. Replacements are also acceptable if done before the effective date of this AD in accordance with Airbus Service Bulletin A320–28–1105, Revision 01, dated March 18, 2003; and Airbus Service Bulletin A320–28–1105, dated October 22, 2002.

Parts Installation

(h) As of the effective date of this AD, no person may install an ACT having any P/N listed in Table 1 of this AD, unless the actions required by paragraph (g) of this AD have been done for that ACT.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) French airworthiness directive F–2004–038, dated March 17, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Airbus Service Bulletin A320–28–1105, Revision 02, dated March 11, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on October 26, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22219 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22169; Directorate Identifier 2005–NM–094–AD; Amendment 39–14361; AD 2005–23–03]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F airplanes. This AD requires replacement of the spherical accumulator for the main hydraulic system with a new cylindrical accumulator. For certain airplanes, this AD also requires modification of the accumulator pressure gauge. This AD results from reports of the failure of two thrust reverser accumulators (which are similar to the main hydraulic system's spherical accumulator) and fatigue cracks found on four thrust reverser accumulators. We are issuing this AD to prevent failure of the spherical accumulator for the main hydraulic system, due to fatigue cracking on the threads, which could result in the loss of hydraulic power, damage to the surrounding airplane structure, and loss of airplane control. The failure of the accumulator could also result in injury to any persons in the surrounding area. The loss of hydraulic fluid could also leak onto a potential source of ignition and result in a consequent fire.

DATES: This AD becomes effective December 19, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 19, 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 Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Robert Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F airplanes. That NPRM was published in the **Federal Register** on August 23, 2005 (70 FR 49210). That NPRM proposed to require replacement of the spherical accumulator for the main hydraulic system with a new cylindrical accumulator. For certain

airplanes, that proposed AD would also require modification of the accumulator pressure gauge.

Comments

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

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

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

Costs of Compliance

There are about 434 airplanes of the affected design in the worldwide fleet. This AD will affect about 242 airplanes of U.S. registry. The actions will take about 9 to 13 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $1,336 to $1,363 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $464,882 to $534,336, or $1,921 to $2,208 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–23–03 Learjet: Amendment 39–14361. Docket No. FAA–2005–22169; Directorate Identifier 2005–NM–094–AD.

Effective Date

(a) This AD becomes effective December 19, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F airplanes, certificated in any category; having serial numbers 23–003 through 23–099 inclusive, 24–100 through 24–284 inclusive, and 25–003 through 25–153 inclusive.

Unsafe Condition

(d) This AD results from reports of the failure of two thrust reverser accumulators (which are similar to the main hydraulic system's accumulator) and fatigue cracks found on four thrust reverser accumulators. We are issuing this AD to prevent failure of the spherical accumulator for the main hydraulic system, due to fatigue cracking on the threads, which could result in the loss of hydraulic power, damage to the surrounding airplane structure, and loss of airplane control. The failure of the accumulator could also result in injury to any persons in the surrounding area. The loss of hydraulic fluid could also leak onto a potential source of ignition and result in a consequent fire.

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.

Replacement

(f) Within 60 days after the effective date of this AD, replace the spherical accumulator having part number (P/N) 2380025–() or P/N 2380167–() with a new cylindrical accumulator having P/N 2497202–801, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A23/24/25–29–4, Revision 1, dated January 17, 2005.

Concurrent Action

(g) For airplanes having serial numbers 23–003 through 23–014 inclusive: Prior to or concurrently with the actions in Bombardier Alert Service Bulletin A23/24/25–29–4, Revision 1, dated January 17, 2005, relocate the accumulator pressure gauge in accordance with Learjet Service Kit SK23–215, dated April 4, 1966.

Parts Installation

(h) As of the effective date, no spherical accumulator having P/N 2380025–() or P/N 2380167–() may be installed on any airplane.

Previous Actions

(i) Replacements done before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A23/24/25–29–4, dated August 20, 2004, are acceptable for compliance with the requirements of paragraph (f) of this AD.

No Reporting Required

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

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(l) You must use Bombardier Alert Service Bulletin A23/24/25–29–4, Revision 1, dated January 17, 2005; and Learjet Service Kit SK23–215, dated April 4, 1966; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. (The issue date of Learjet Service Kit SK23–215 is located only on the first and last pages of the document.) The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22220 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22147; Directorate Identifier 2005–NM–114–AD; Amendment 39–14371; AD 2005–23–13]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This AD requires modification of the logic of the steering system of the nose landing gear (NLG) wheel. This AD results from reports of the loss of directional control of the airplane on the ground after an internal failure of the NLG wheel steering system. We are issuing this AD to prevent failure of the NLG wheel steering system, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective December 19, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 19, 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, 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 would apply to certain EMBRAER Model EMB–135 airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That NPRM was published in the **Federal Register** on August 22, 2005 (70 FR 48906). That NPRM proposed to require modification of the logic of the steering system of the nose landing gear (NLG) wheel.

Comments

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

Request To Reference Latest Revision of EMBRAER Service Bulletins

Two commenters request that the NPRM reference EMBRAER Service Bulletin 145–32–0104, Revision 03, dated June 21, 2005 (EMBRAER Service Bulletin 145–32–0104, dated January 18, 2005, is referenced as an appropriate source of service information for doing the actions specified in the NPRM). One commenter proposes revising paragraphs (c) and (f) of the NPRM to reference Revision 03 of the service bulletin. The same commenter also requests that EMBRAER Service Bulletin 145–32–0104, dated January 18, 2005; EMBRAER Service Bulletin 145–32–0104, Revision 01, dated April 14, 2005; and EMBRAER Service Bulletin 145–32–0104, Revision 02, dated May 19, 2005; be considered acceptable for compliance with the NPRM.

The same commenter also requests that paragraphs (c) and (f) of the NPRM be revised to reference EMBRAER Service Bulletin 145LEG–32–0020, Revision 01, June 21, 2005 (EMBRAER Service Bulletin 145LEG–32–0020, dated April 1, 2005, is referenced as an appropriate source of service information for doing the actions specified in the NPRM). In addition, the commenter requests that EMBRAER Service Bulletin 145LEG–32–0020, dated April 1, 2005, be considered acceptable for compliance with the NPRM.

We agree with the commenters. The procedures in Revision 01 of EMBRAER Service Bulletin 145LEG–32–0020 are essentially the same as those in the original issue of the service bulletin. Revision 01 was issued to correct certain diagrams.

The procedures in Revision 03 of EMBRAER Service Bulletin 145–32–0104 are essentially the same as those in the original issue of the service bulletin. Revisions 01 and 02 were issued to revise certain figures. Revisions 01 and 02 were also issued to split the effectivity of the service bulletin into groups and clarify that serial numbers 14500839, 14500848, and 14500882 have an equivalent factory-incorporated modification and are not affected airplanes. Revision 03 was issued to update kit information.

No airplanes have been added to the effectivity of any revision of EMBRAER Service Bulletin 145–32–0104 or 145LEG–32–0020.

We have revised paragraphs (c) and (f) of this AD to reference EMBRAER Service Bulletin 145–32–0104, Revision 03, dated June 21, 2005; and EMBRAER Service Bulletin 145LEG–32–0020, Revision 01, June 21, 2005. We have also added a new paragraph (g) to this AD to state that actions accomplished according to the previous issues of the service bulletins are acceptable for

compliance with the corresponding requirements of this AD.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised 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.

Conclusion

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

Costs of Compliance

This AD will affect about 620 airplanes of U.S. registry. The actions will take about 6 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost between $49 and $391. Based on these figures, the estimated cost of the AD for U.S. operators is between $272,180 and $484,220, or between $439 and $781 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–23–13 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14371. Docket No. FAA–2005–22147; Directorate Identifier 2005–NM–114–AD.

Effective Date

(a) This AD becomes effective December 19, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, identified in EMBRAER Service Bulletin 145LEG–32–0020, Revision 01, June 21, 2005; and Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, identified in EMBRAER Service Bulletin 145–32–0104, Revision 03, dated June 21, 2005; certificated in any category.

Unsafe Condition

(d) This AD results from reports of the loss of directional control of the airplane on the ground after an internal failure of the steering system of the nose landing gear (NLG) wheel. We are issuing this AD to prevent failure of the NLG wheel steering system, which could result in reduced controllability of the airplane.

Compliance

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

Modification

(f) Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, modify the logic of the NLG wheel steering system in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–32–0020, Revision 01, June 21, 2005 (for Model EMB–135BJ airplanes); or EMBRAER Service Bulletin 145–32–0104, Revision 03, dated June 21, 2005 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes); as applicable.

Actions Accomplished in Accordance With Previous Issues of Service Bulletins

(g) Actions accomplished before the effective date of this AD in accordance with the service bulletins listed in Table 1 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1.—PREVIOUS ISSUES OF SERVICE BULLETINS

EMBRAER service bulletin	Revision level	Date
145–32–0104	Original	January 18, 2005.
145–32–0104	01	April 4, 2005.
145–32–0104	02	May 19, 2005.
145LEG–32–0020.	Original	April 1, 2005.

Alternative Methods of Compliance (AMOCs)

(h)(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 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) Brazilian airworthiness directive 2005–04–02, dated April 30, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 145LEG–32–0020, Revision 01, June 21, 2005; or EMBRAER Service Bulletin 145–32–0104, Revision 03, dated June 21, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. EMBRAER Service Bulletin

145LEG–32–0020, Revision 01, June 21, 2005, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1, 2, 15, 19	01	June 21, 2005.
3–14, 16–18, 20, 21	Original	April 1, 2005.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 2, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22308 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22867; Directorate Identifier 2005–NM–209–AD; Amendment 39–14359; AD 2005–23–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness of the Canadair Regional Jet Maintenance Requirements Manual by incorporating new procedures for repetitive detailed and special detailed inspections for cracking of the aft pressure bulkhead. This AD results from a fatigue test, which revealed cracking of the aft pressure bulkhead; subsequent in-service reports show that fatigue cracking has been found on other airplanes. We are issuing this AD to detect and correct cracking in the aft pressure bulkhead, which could result in reduced structural integrity and rapid decompression of the airplane.

DATES: This AD becomes effective November 29, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 29, 2005.

We must receive comments on this AD by January 13, 2006.

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

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

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7302; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that during a complete aircraft fatigue test, cracking of the aft pressure bulkhead was found. Subsequent in-service reports show that fatigue cracking has been found on airplanes with as few as 17,821 total flight cycles. This condition, if not corrected, could result in reduced structural integrity and rapid decompression of the airplane.

Relevant Service Information

Bombardier has issued Canadair Regional Jet Temporary Revision (TR) 2B–2109, dated October 13, 2005, to the Canadair Regional Jet Maintenance Requirements Manual (MRM), Part 2, Appendix B, ''Airworthiness Limitations.'' This TR incorporates repetitive special detailed and detailed inspections for cracking of the aft pressure bulkhead, in accordance with the procedures specified in the applicable task identified in the TR, into the MRM. TCCA mandated airworthiness limitations (AWL) Number 53–61–153 of the TR and issued Canadian airworthiness directive CF–2005–13R1, dated October 6, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to detect and correct cracking in the aft pressure bulkhead, which could result in reduced structural integrity and rapid decompression of the airplane. This AD requires revising the AWL section of the Instructions for Continued Airworthiness of the Canadair Regional

Jet MRM by incorporating new repetitive detailed and special detailed inspections for cracking of the aft pressure bulkhead. This AD requires incorporating the actions specified in AWL Number 53–61–153 of the TR described previously into the Canadair Regional Jet MRM.

Difference Between the AD and Canadian Airworthiness Directive

The initial compliance times specified in the Canadian airworthiness directive are different than those that are required by this AD. The Canadian airworthiness directive contains a phase-in period based on a previous issue of that airworthiness directive; this AD does not include those compliance times. This difference has been coordinated with TCCA.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22867; Directorate Identifier 2005–NM–209–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–23–01 Bombardier, Inc. (Formerly Canadair): Amendment 39–14359. Docket No. FAA–2005–22867; Directorate Identifier 2005–NM–209–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, having serial numbers 7003 through 8025 inclusive, 8030 and 8034.

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 (h) 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.

Unsafe Condition

(d) This AD results from a fatigue test which revealed cracking of the aft pressure bulkhead; subsequent in-service reports show that fatigue cracking has been found on certain other airplanes. We are issuing this AD to detect and correct cracking in the aft pressure bulkhead, which could result in reduced structural integrity and rapid decompression of the airplane.

Compliance

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

Revision to the Airworthiness Limitations (AWL) Section

(f) Within 30 days after the effective date of this AD: Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness of the Canadair Regional Jet Maintenance Requirements Manual (MRM), Part 2, Appendix B, ''Structural Airworthiness Limitations'' by incorporating the information specified in AWL Number 53–61–153 of the Canadair Regional Jet Temporary Revision (TR) 2B–2109, dated October 13, 2005, into the AWL section. Perform the applicable detailed and special detailed inspections for cracking of the aft pressure bulkhead, as specified in the TR, at the applicable compliance time specified in Table 1 of this AD. Repeat the detailed inspection thereafter at intervals not to exceed 1,085 flight cycles, and repeat the special detailed inspection thereafter at intervals not to exceed 4,360 flight cycles, in accordance with the procedures specified in Structural Airworthiness Limitations, AWL Number 53–61–153, as introduced by the MRM.

TABLE 1.—COMPLIANCE TIMES FOR INITIAL INSPECTIONS

As of the effective date of this AD: If the total flight cycles accumulated on the airplane are—	Inspect before the airplane accumulates—
8,000 or fewer	12,000 total flight cycles.
More than 8,000 but fewer than 12,000	15,000 total flight cycles or within 4,000 flight cycles after the effective date of this AD, whichever is first.
12,000 or more but fewer than 15,000	17,000 total flight cycles or within 3,000 flight cycles after the effective date of this AD, whichever is first.
15,000 or more but fewer than 17,000	18,500 total flight cycles or within 2,000 flight cycles after the effective date of this AD, whichever is first.
17,000 or more but fewer than 18,500	19,500 total flight cycles or within 1,500 flight cycles after the effective date of this AD, whichever is first.
18,500 or more but fewer than 19,500	20,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever is first.
19,500 or more	500 flight cycles after the effective date of this AD.

(g) When the information in AWL Number 53–61–153 of the Canadair Regional Jet TR 2B–2109, dated October 13, 2005, is included in the general revisions of the MRM, the general revisions may be inserted into the AWL section of the Instructions for Continued Airworthiness, and this information may be removed from the MRM.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) Canadian airworthiness directive CF–2005–13R1, dated October 6, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Canadair Regional Jet Temporary Revision 2B–2109, dated October 13, 2005, to the Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_ regulations/ibr_locations.html*.

Issued in Renton, Washington, on October 31, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22309 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22910; Directorate Identifier 2005–NM–208–AD; Amendment 39–14372; AD 2005–23–14]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 airplanes. This AD requires repetitively replacing the low-stage check valve and associated seals of the right-hand engine bleed system. This AD results from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We are issuing this AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

DATES: This AD becomes effective November 29, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 29, 2005.

We must receive comments on this AD by January 13, 2006.

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

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

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 airplanes. The DAC advises that there was an occurrence of an engine that shut down during flight. A low-stage check valve of the engine bleed system failed to close due to excessive wear. This condition, if not corrected, could result in an engine shutting down during flight.

Relevant Service Information

EMBRAER has issued Alert Service Bulletin 170–36–A004, dated September 28, 2005. The alert service bulletin describes procedures for repetitively replacing the low-stage check valve and associated seals of the engine bleed system on the right-hand engine with a new check valve and new seals. The alert service bulletin also describes procedures to send the removed check valve to the manufacturer. The DAC mandated the alert service bulletin and issued Brazilian emergency airworthiness directive 2005–09–03, dated September 29, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight. This AD requires accomplishing the actions specified in the service information described previously, except as described below in ''Difference Between this AD and the Alert Service Bulletin.''

The manufacturer is developing further action on the check valves and the supply of check valves. Further action may involve action on the left-hand engine's check valve. We may consider further rulemaking to require actions on the left-hand engine in addition to the actions required for the right-hand engine.

Clarification of AD and Brazilian Airworthiness Directive Requirements

The FAA recognizes that the unsafe condition could occur on both engines. Based on the most recent parts supply information from the manufacturer, there are not enough replacement check valves available to mandate actions on both engines without grounding airplanes for an indeterminate amount of time. However, there are enough check valves available to require action on one engine, which would reduce the possibility that both engines could have a failed check valve during a flight. We have considered the risks of a one-engine failure in comparison to a dual-engine failure, and the efforts by the manufacturer to produce more replacement parts. Based on this assessment, we have determined that modifying one engine reduces the risk of a dual-engine failure to the level that such action is sufficient at this time to produce an acceptable level of safety.

Difference Between This AD and the Alert Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced alert service bulletin describes procedures for sending removed check valves to the manufacturer, this AD does not require that action.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22910; Directorate Identifier 2005–NM–208–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–23–14 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14372. Docket No. FAA–2005–22910; Directorate Identifier 2005–NM–208–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100LR, –100 STD, –100SE, and –100 SU airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We are issuing this AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

Compliance

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

Replacement

(f) Within 100 flight hours after the effective date of this AD or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the right-hand engine's engine bleed system with a new check valve and new seals in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

Parts Installation

(g) As of the effective date of this AD, no engine may be installed in the right-hand position unless the low-stage check valve has been replaced in accordance with the actions required by paragraph (f) of this AD.

Removed Check Valves

(h) Although EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) Brazilian emergency airworthiness directive 2005–09–03, dated September 29, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 2, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22442 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 05–AWP–12]

Establishment of a Class E Enroute Domestic Airspace Area, San Luis Obispo, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes a Class E enroute domestic airspace area west of San Luis Obispo, CA, to replace existing Class G uncontrolled airspace.

DATES: 0901 UTC April 13, 2006. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before December 14, 2005.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 05–AWP–12, Western Terminal Operations, PO Box 92007, Worldway Postal Center, Los Angeles, California 90009. The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Western Terminal Operations at the above address.

FOR FURTHER INFORMATION CONTACT: Francie Hope, Western Terminal

Operations Airspace Specialist, AWP–520.3, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION: This action will establish a Class E enroute domestic airspace area west of San Luis Obispo to contain aircraft while in Instrument Flight Rules (IFR) conditions and under control of Santa Barbara Terminal Radar Approach Control (TRACON). On November 2, 2005, airspace will be transferred from Los Angeles Air Route Traffic Control Center (ARTCC) to Santa Barbara TRACON. In order to provide positive control of aircraft in this area, the airspace must be designated as controlled airspace.

Class E enroute domestic airspace areas are published in Paragraph 6006 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 class E airspace designation listed in this document would be published subsequently in this Order.

The Direct Final Rule Procedure

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

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, and arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. 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.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 05–AWP–12.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the State, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11304; 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 than will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; 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 CR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

Paragraph 6006 Enroute Domestic Airspace Areas

* * * * *

San Luis Obispo, CA [Established]

That airspace extending upward from 1200 feet above the surface (AGL) bounded on the north by Monterey Class E5 airspace, on the east by V27 and Santa Barbara Class E5 airspace, and on the south and west by Control Area 115L.

Issued in Los Angeles, California, on October 28, 2005.

Tony DiBernardo,

Acting Area Director, Western Terminal Operations.

[FR Doc. 05–22523 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1345

[Docket No. NHTSA–2005–22879]

RIN 2127–AJ72

Incentive Grant Criteria for Occupant Protection Programs; Technical Amendments

AGENCY: National Highway Traffic Safety Administration, Department of Transportation

ACTION: Interim final rule; technical amendments.

SUMMARY: This document makes technical amendments to the regulation governing the Occupant Protection Incentive Grant program, 23 CFR part 1345, in light of new legislation extending the program. It updates information to conform to the new time period covered by the program and changes the due date for the submission of applications.

DATES: The technical amendments made in this rule are effective November 14, 2005. Comments on the change in the application due date must be submitted by December 14, 2005.

ADDRESSES: Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments. Comments should be submitted (preferably in two copies) to: Docket Management, Room PL–401, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are Monday–Friday, 10 a.m. to 5 p.m., excluding Federal holidays.) You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing your comments electronically.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Hammond, Injury Control Operations and Resources, NTI–200, telephone (202) 366–2121, fax (202) 366–7394. For legal issues: David Bonelli, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 2003 of The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178 (1998) established a new occupant protection incentive grant program under Section 405 of Title 23, United States Code. Under this program, States could qualify for incentive grant funds by adopting and implementing effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles. The program, which made grant funds available from fiscal year (FY) 1998 through FY 2003, was designed to stimulate increased safety belt and child safety seat use. Funding was continued through FY 2005 by Congressional appropriations extending TEA–21 grant programs.

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), Public Law 109–59. SAFETEA–LU extends the occupant protection incentive grant program from FY 2006 through FY 2009 by amending provisions of 23 U.S.C. 405. The legislation updates a grant condition that previously required States to maintain occupant protection program spending from other sources at or above average levels from the two fiscal years prior to the enactment of TEA–21 (FY 1996–1997). As amended, 23 U.S.C. 405(a)(2) now requires States to maintain spending from other sources at or above average levels from the two fiscal years prior to the enactment of SAFETEA–LU (FY 2003–2004). The legislation increases the amount of funds to which a State is entitled by amending the apportionment percentage and updating the fiscal year under 405(c). Prior to the amendment, a State was entitled to an amount equal to 25 percent of its Section 402 apportionment for FY 1997. A State now is entitled to an amount equal to 100 percent of its section 402 apportionment for FY 2003. The legislation also specifies that grant funds may be transferred among programs authorized under 23 U.S.C. 405, 408, and 410. The previous legislation, TEA–21, authorized the transfer of funds among programs authorized under 23 U.S.C. 405, 410, and 411.

SAFETEA–LU amends section 405(a)(4) to specify the Federal share to which a State is entitled. While the new program begins in FY 2006, the Federal share is based on the number of fiscal years, beginning after September 30, 2003, that the State has received a grant under the Section 405 program. Thus, counting back to FY 2004, for the first or second year in which a State receives a grant, the Federal share must not exceed 75 percent; for the third or fourth year, the Federal share must not exceed 50 percent; and for the fifth or sixth year, the Federal share must not exceed 25 percent. The determination of the Federal share for the predecessor program under Section 405 remains unchanged.

This document amends the provisions of 23 CFR part 1345 to reflect these statutory changes and to extend the occupant protection incentive grant program through FY 2009. We are amending § 1345.4(a)(1)(iv) to indicate that States must maintain aggregate expenditures from other sources at or above the average level of expenditures in FY 2003–2004. We are amending § 1345.4(b)(1) to specify that the amount of a grant shall be equal to 100 percent of the amount apportioned to the State under 23 U.S.C. 402 for FY 2003. We are making a number of other changes to § 1345.4(b) to specify the Federal share, based on the number of years that a State participates in the program. We are amending § 1345.6 to indicate that unobligated funds from this grant program may be transferred to programs authorized under 23 U.S.C. 408 and 410. To clarify the application and certification process for State participants under the new legislation, we are adding definitions for ''first fiscal year'' and ''subsequent fiscal years'' in § 1345.3. We are also eliminating references to ''section 2003 of TEA–21.''

We are changing the application due date in § 1345.4(a)(4) from August 1 of the applicable fiscal year to February 15. We believe that an earlier application due date is appropriate for the new program because less lead time is necessary for States to submit applications under the extension of this well-established program. The new due date will allow these grant funds to be awarded in time for spring national safety belt mobilization campaigns. We are soliciting comments from the States on this change in the application due date.

These technical amendments are mostly conforming amendments and will not impose or relax any substantive requirements or burdens on State grant participants. Therefore, we find good cause that notice and opportunity for comment on these amendments (with the exception of the change in application due date) are not necessary under the Administrative Procedures Act. We also find good cause to limit the period for comment on the change in the application due date to 30 days. A limited comment period is necessary to give States adequate time after the effective date of the final rule to submit applications. A limited comment period is also justified because we are soliciting comment on a single issue.

Statutory Basis for This Interim Final Rule

The statutory basis for this rule is the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), Public Law 109–59 (2005). SAFETEA-LU extends the occupant protection incentive grant program from FY 2006 through FY 2009 by amending provisions of 23 U.S.C. 405.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. This rulemaking document is not significant under Executive Order 12866 or the Department of Transportation's (DOT) regulatory policies and procedures. (44 FR 11034, February 26, 1979). The effect of this rulemaking action is to make technical amendments to the regulation governing the Occupant Protection Incentive Grant program, in light of new legislation extending the program. It will not impose any additional burden on any person. The agency believes that this impact is minimal and does not warrant the preparation of a regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this interim final rule under the National Environmental Policy Act. This rulemaking action makes technical amendments to the regulation governing the Occupant Protection Incentive Grant program, in light of new legislation extending the program. This rulemaking does not impose any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The interim final rule makes technical amendments to a regulation governing the Occupant Protection Incentive Grant Program. States are the recipients of any funds awarded under this program, and they are not considered to be small entities, as that term is defined in the Regulatory Flexibility Act. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA 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.'' This interim final rule does not change the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. This interim final rule merely extends the occupant protection incentive grant program through FY 2009, as directed by statute. We are soliciting public comment on one substantive change made in this interim final rule—the change in application due date in Section 1345.4(b)(4) from August 1 of the applicable fiscal year to February 15.

E. Paperwork Reduction Act

This interim final rule does not add any new information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The existing requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved under OMB No. 2127–0600, through April 30, 2008.

F. The Unfunded Mandates Reform Act

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 more than $100 million annually. This action will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

G. Civil Justice Reform

This interim final rule does not have any retroactive effect. A petition for reconsideration or other administrative proceedings are not required before parties may file suit in court.

H. Privacy Act

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*.

List of Subjects in 23 CFR Part 1345

Grant programs—Transportation, Highway safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 23 CFR Part 1345 is amended to read as follows:

PART 1345—INCENTIVE GRANT CRITERIA FOR OCCUPANT PROTECTION PROGRAMS

■ 1. The authority citation is amended to read as follows:

Authority: Pub. L. 105–78; Pub. L. 109–59; 23 U.S.C. 405; delegation of authority at 49 CFR 1.50.

■ 2. Section 1345.1 is revised to read as follows:

§ 1345.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 405, for awarding incentive grants to States that adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

■ 3. Section 1345.2 is revised to read as follows:

§ 1345.2 Purpose.

The purpose of this part is to implement the provisions of 23 U.S.C. 405 and to encourage States to adopt effective occupant protection programs.

■ 4. Section 1345.3 is amended by removing paragraph designations (a) through (f) and adding the following definitions in alphabetical order to read as follows:

§ 1345.3 Definitions.

* * * * *

First fiscal year means the first fiscal year beginning after September 30, 2003.

* * * * *

Subsequent fiscal years means the second, third, fourth, fifth, or sixth fiscal year beginning after September 30, 2003.

* * * * *

■ 5. Section 1345.4 is amended by revising paragraphs (a)(1)(iv), (a)(4), and (b) to read as follows:

§ 1345.4 General Requirements.

(a) * * *

(1) * * *

(iv) It will maintain its aggregate expenditures from all other sources, except those authorized under Chapter 1 of Title 23 of the United States Code, for its occupant protection programs at

or above the average level of such expenditures in fiscal years 2003 and 2004 (either State or federal fiscal year 2003 and 2004 can be used);

* * * * *

(4) To qualify for grant funds in any fiscal year, the application must be received by the agency not later than February 15 of the fiscal year in which the State is applying for funds.

* * * * *

(b) *Limitations on grants.* A state may receive a grant in a fiscal year subject to the following limitations:

(1) Beginning in fiscal year 2006, the amount of a grant under § 1345.5 shall equal up to 100 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 2003, subject to availability of funds.

(2) In the first and second fiscal years beginning after September 30, 2003 that a State receives a grant, it shall be reimbursed for up to 75 percent of the cost of its occupant protection program adopted pursuant to 23 U.S.C. 405.

(3) In the third and fourth fiscal years beginning after September 30, 2003 that a State receives a grant, it shall be reimbursed for up to 50 percent of the cost of its occupant protection program adopted pursuant to 23 U.S.C. 405.

(4) In the fifth and sixth fiscal years beginning after September 30, 2003 that a State receives a grant, it shall be reimbursed for up to 25 percent of the cost of its occupant protection program adopted pursuant to 23 U.S.C. 405.

■ 6. Section 1345.5 is amended by revising the first sentence in paragraph (d)(4) introductory text; revising the introductory text of paragraph (g), and revising paragraph (g)(1) to read as follows:

§ 1345.5 Requirements for a grant.

* * * * *

(d) * * *

(4) To demonstrate compliance with this criterion in the first fiscal year the State receives a grant based on this criterion, the State shall submit a plan to conduct a program that covers each element identified in paragraphs (d)(1) through (d)(3) of this section. * * *

* * * * *

(g) *Certifications in subsequent fiscal years:* (1) To demonstrate compliance in subsequent fiscal years the State receives a grant based on criteria in paragraphs (a), (b), (c) or (f) of this section, if the State's law, regulation or binding policy directive has not changed, the State, in lieu of resubmitting its law, regulation or binding policy directive as provided in paragraphs (a)(3), (b)(2), (c)(2)(i) or (f)(2) of this section, may submit a statement certifying that there have been no substantive changes in the State's laws, regulations, or binding policy directives.

* * * * *

■ 7. Section 1345.6 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1345.6 Award procedures.

* * * * *

(b) If any amounts authorized for grants under this part for a fiscal year are expected to remain unobligated in that fiscal year, the Administrator may transfer such amounts to the programs authorized under 23 U.S.C. 408 and 23 U.S.C. 410, to ensure to the extent possible that each State receives the maximum incentive funding for which it is eligible.

(c) If any amounts authorized for grants under 23 U.S.C. 408 and 23 U.S.C. 410 are transferred to the grant program under this part in a fiscal year, the Administrator shall distribute the transferred amounts so that each eligible State receives a proportionate share of these amounts, subject to the conditions specified in § 1345.4.

Issued on: November 7, 2005.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 05–22496 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–59–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–314–0483; FRL–7975–7]

Approval and Promulgation of State Implementation Plans for Air Quality Planning Purposes; California—South Coast and Coachella

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standards (NAAQS) in the Los Angeles–South Coast Air Basin and the Coachella Valley Area, and to establish emissions budgets for these areas for purposes of transportation conformity. EPA is also approving revisions to fugitive dust regulations and ordinances for the areas. EPA is approving these SIP revisions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This rule is effective on December 14, 2005.

ADDRESSES: You can inspect copies of the docket for this action at EPA's Region IX office during normal business hours by appointment at the following location: EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations: California Air Resources Board, 1001 I Street, Sacramento, California, 95812. South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California, 91765.

The 2003 Air Quality Management Plan, which includes the South Coast PM10 plan, is electronically available at: *http://www.aqmd.gov/aqmp/AQMD03AQMP.htm*

The 2003 Coachella Valley PM10 State Implementation Plan is at: *http://www.aqmd.gov/aqmp/docs/f2003cvsip.pdf*

The fugitive dust rules are at: *http://www.aqmd.gov/rules/rulesreg.html*

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, at (415) 972–3957, or *jesson.david@epa.gov.*

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

Table of Contents

I. Summary of Proposed Action
II. Public Comments
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I. Summary of Proposed Action

On July 28, 2005 (70 FR 43663), we proposed to approve 2003 plan amendments for the South Coast Air Basin (or ''South Coast''), as the plan amendments pertain to attainment of the 24-hour and annual PM–10 NAAQS.[1] We also proposed to approve revisions to the PM–10 plan for the Coachella Valley Planning Area (''Coachella Valley'').[2] We proposed to approve the plans'' PM–10 motor vehicle emissions budgets for purposes of transportation conformity. Finally, we proposed to approve revisions to Rules 403, 403.1, and 1186 of the South

[1] The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties. For a description of the boundaries of the Los Angeles-South Coast Air Basin Area, see 40 CFR 81.305.

[2] The Coachella Valley Planning Area is in central Riverside County in the Salton Sea Air Basin. The boundary is defined at 40 CFR 81.305.

Coast Air Quality Management District (SCAQMD) regulating fugitive dust emissions, and revised fugitive dust ordinances for Coachella Valley jurisdictions. These revisions update, improve, strengthen, and supplement the approved SIP provisions for control of PM–10 and PM–10 precursors in the two areas.

Our proposal was based on the following SIP submittals by the State of California:

(1) That portion of the 2003 South Coast Air Quality Management Plan (''2003 South Coast AQMP''), including motor vehicle emissions budgets, adopted by the SCAQMD on August 1, 2003, and submitted to us on January 9, 2004, that pertains to PM–10;

(2) the 2003 Coachella Valley PM10 State Implementation Plan (''2003 Coachella Valley Plan''), including motor vehicle emissions budgets, adopted by the SCAQMD on August 1, 2003, and submitted to us on January 9, 2004;

(3) revisions to Rules 403, 403.1, and 1186, adopted by SCAQMD on April 2, 2004, and submitted by CARB on July 29, 2004;

(4) revisions to the implementation handbooks for Rules 403 and 403.1, adopted by SCAQMD on April 2, 2004, and submitted by CARB on November 16, 2004; and

(5) revised Coachella Valley ordinances, which were adopted by the local jurisdictions on various dates in 2003 and 2004, and submitted by CARB on November 16, 2004.

Our proposal contains detailed information on these SIP submittals and our evaluation of the submittals against applicable CAA provisions and EPA policies relating to serious area PM–10 SIPs.

II. Public Comments

We received two public comments. The first comment was from SCAQMD (e-mail from Jill Whynot, dated August 26, 2005), requesting that we annotate Table 1 (''South Coast PM–10 Control Measures''), with a footnote updating information on certain of the measures, and Table 2 (''South Coast Emission Reduction Commitments), with a footnote providing an update on the implementation of measure CMB–07. We have inserted new footnote 3 in Table 1 and new footnote 1 in Table 2, below, as requested by SCAQMD.

With respect to the note on Table 1, the SCAQMD referenced material provided on Agenda Item #39 for the December 3, 2004 Governing Board meeting.[3] The PRC–03 emission reduction commitment for under-fired charbroilers was projected to be 0.2 tons per day (tpd) of PM–10 by 2006 and 1.0 tpd by 2010. Substitute reductions come from the implementation of Rules 1186 and 403. The reductions in excess of the AQMP commitment are estimated to be 0.7 tpd starting in 2005 for Rule 403 and 0.28 tpd for Rule 1186 starting in 2006, for a total of 0.98 tpd of PM–10. With growth factors applied, the reduction is estimated to be 1.04 tpd of PM–10 in 2010. Emission reductions from these two rules are not counted in the 2003 South Coast AQMP, and thus 0.28 tpd in 2006 and 1.0 tpd of PM–10 reductions in 2010 may be substituted for the SIP commitment for PRC–03. This ensures that the plan will continue to meet the requirements for reasonable further progress and attainment.

TABLE 1.—SOUTH COAST PM–10 CONTROL MEASURES

[Source: South Coast 2003 AQMP, Appendix IV–A]

Control measure No.	Control measure title	2006 reduction target in tons per day
	Remaining 2002 SIP Control Measures	
CMB–07	Emission Reductions from Petroleum Refinery Flares (SOx)	2.1
CMB–09 [1]	Petroleum Refinery Fluid Catalytic Cracking Units (PM–10, NH3)	0.1, 0
WST–01 [1]	Emission Reductions from Livestock Waste (VOC, NH3)	4.2, 8.7
WST–02 [1]	Emission Reductions from Composting (VOC, NH3)	1.2, 1.9
PRC–03 (P2)	Emission Reductions from Restaurant Operations (PM–10) [3]	0.2
	New Control Measures	
BCM–07 [1]	Further PM10 Reductions from Fugitive Dust Sources (PM–10)	TBD
BCM–08 [1]	Further Emission Reductions from Aggregate and Cement Manufacturing Operations (PM–10)	0.6
MSC–04	Miscellaneous Ammonia Sources (NH3)	TBD
MSC–06	Wood-Burning Fireplaces and Wood Stoves (PM–10)	TBD
TCB–01 [2]	Transportation Conformity Backstop Measure (PM–10)	0

[1] These measures have already been adopted by SCAQMD. Revisions to Rules 403 and 1186 fulfill BCM–07; new Rule 1127 (Emission Reductions from Livestock Waste, adopted 8/6/04) addresses WST–01; new Rule 1133.2 (Emission Reductions from Co-Composting Operations, adopted 1/10/03) responds to WST–02 commitments; new Rule 1105.1 (Reduction of PM–10 and Ammonia Emissions from Fluid Catalytic Cracking Units, adopted 11/7/03) meets the CMB–09 commitment; and new Rule 1157 (PM–10 Emissions Reductions from Aggregate and Related Operations, adopted 1/07/05) fulfills the BCM–08 commitment.

[2] This measure, which is intended to achieve reductions in PM–10 after the 2006 attainment date, is discussed below and in Section II.G., Motor Vehicle Emission Budgets.

[3] In December 2004, the SCAQMD Governing Board made a finding at a public hearing that further reductions for this category were infeasible at this time. Emission reductions from Rules 403—Fugitive Dust, and 1186—PM–10 Emissions from Paved and Unpaved Roads, and Livestock Operations, were substituted for the emission reduction commitments for PRC–03.

[3] This supplemental information is incorporated in the Docket for this rulemaking and it is also available electronically at: *http://www.aqmd.gov/hb/2004/041239a.html*

TABLE 2.—SOUTH COAST EMISSION REDUCTION COMMITMENTS—COMMITMENTS TO ADOPT AND IMPLEMENT NEW MEASURES TO ACHIEVE EMISSION REDUCTIONS IN TONS PER DAY FROM 2010 PLANNING INVENTORY

[Source: South Coast 2003 AQMP, Table 4–8A]

Year	VOC		PM–10		NO_X		SO_X[1]	
	Adopt	Impl	Adopt	Impl	Adopt	Impl	Adopt	Impl
2004	2.0	0	1.7	0	3.0	0	2.1	0
2005	2.0	0	0	0.16	2.1	0	0	2.1
2006	0	4.8	0	0.86	0	0	0	0

[1] Compliance reports from the current version of Rule 1118—Emissions from Refinery Flares, show that these emission reductions have already been achieved since 2003. Amendments to Rule 1118 currently being developed, and scheduled for consideration by the SCAQMD Governing Board in 2005, would maintain the current reductions and seek additional reductions.

As noted in our proposal, the 2003 Coachella Valley Plan contains no new control measure commitments, but relies on the adopted revisions to Rules 403 and 403.1 and the local ordinances.

The second comment was from CARB (letter from Cynthia Marvin, dated August 29, 2005). CARB pointed out that Table 8 (''Proposed Approvals of South Coast and Coachella Valley PM–10 Attainment Plan Submittals'') contains a typographical error, in referencing contingency measure CTY–04. We have corrected this error in Table 3 (''Approvals of South Coast and Coachella Valley PM–10 Attainment Plan Submittals'') in section III below, by indicating that the approved contingency measure is CTY–14.

CARB also asked that we note that the 2003 South Coast AQMP description of contingency measures CTY–01—Accelerated Implementation of Control Measures, and TCB–01—Transportation Conformity Budget Backstop Measure incorrectly lists CARB as an implementing agency. We have added a new footnote 1 to Table 3 below, to indicate that these two contingency measures do not apply to CARB.

III. EPA Action

In this document, we are finalizing the actions on the submittals referenced above. We are approving revisions to SCAQMD Rules 403 (except for subdivision h), 403.1 (except for subdivision j), and 1186 regulating fugitive dust emissions; revisions to the implementation handbooks for the rules (Rule 403 Implementation Handbook, Chapters 5, 7, and 8; Rule 403 Coachella Valley Agricultural Handbook; Rule 403.1 Implementation Handbook, Chapters 2, 3, 4, and 7); and revisions to the fugitive dust ordinances for 10 Coachella Valley jurisdictions. These revisions update, improve, strengthen, supplement, and replace the SIP provisions for control of PM–10 and PM–10 precursors in the two areas.

We are approving the 2003 plan amendments to the 2002 SIPs for the South Coast and Coachella Valley serious nonattainment areas, as the plan amendments pertain to CAA provisions applicable to attainment SIPs for the 24-hour and annual PM–10 NAAQS. Specifically, we are approving under section 110(k)(3) the PM–10 portions of the 2003 South Coast AQMP and the 2003 Coachella Valley Plan with respect to the CAA requirements for emissions inventories under section 172(c)(3); control measures, as meeting the requirements of sections 110(a), 188(e), and 189(b)(1)(B); reasonable further progress under section 189(c)(1); contingency measures under section 172(c)(9); demonstration of attainment under section 189(b)(1)(A); and motor vehicle emissions budgets under section 176(c)(2)(A).

The South Coast and Coachella Valley budgets are displayed in our proposed approval as tables 6 and 7 respectively, at 70 FR 43672. We have previously determined that these budgets are adequate (see 69 FR 15325, March 25, 2004), following posting of the budgets on EPA's conformity Web site: *http://www.epa.gov/ otaq/transp/conform/reg9sips.htm*.

We show the plan approvals in Table 3—''Approvals of South Coast and Coachella Valley PM–10 Attainment Plan Submittals.''

TABLE 3.—APPROVALS OF SOUTH COAST AND COACHELLA VALLEY PM–10 ATTAINMENT PLAN SUBMITTALS

CAA Section	Provision	Plan Citation	
		South Coast	Coachella Valley
172(c)(3)	Emission Inventories	2003 South Coast AQMP, Chapter 3 (Tables 3–1A and 3–3A); Appendix III (Tables A–1, A–2, A–3, A–5, and A–7); and Appendix V (Attachment 4).	2003 Coachella Valley Plan, Tables 2–2, 2–3, 2–4, and 2–5.
110(a), 188(e), and 189(b)(1)(B).	Control Measures	Table 1 (derived from 2003 South Coast AQMP, Appendix IV–A) and Table 2 (derived from 2003 South Coast AQMP, Table 4–8A).	No new measures.
172(c)(2), 189(c)(1)	Reasonable Further Progress.	2003 South Coast AQMP, Table 6–1	Table 5 at 70 FR 43671 (derived from 2003 Coachella Valley Plan, Tables 2–9 and 2–7).
172(c)(9)	Contingency Measures	2003 South Coast AQMP, Appendix IV–A, Section 2 (CTY–01, CTY–14, TCB–01)[1].	No new measures.
189(b)(1)(A)	Attainment Demonstration.	2003 South Coast AQMP, Chapter 5; Appendix V, Chapter 2.	2003 Coachella Valley Plan, Chapter 3.

TABLE 3.—APPROVALS OF SOUTH COAST AND COACHELLA VALLEY PM–10 ATTAINMENT PLAN SUBMITTALS—Continued

CAA Section	Provision	Plan Citation	
		South Coast	Coachella Valley
176(c)(2)(A)	Motor Vehicle Emissions Budgets.	Table 6 at 70 FR 43672 (derived from "2003 South Coast AQMP On-Road Motor Vehicle Emissions Budgets").	Table 7 at (derived 70 FR 43672 from "2003 Coachella Valley PM–10 SIP On-Road Motor Vehicle Emissions Budgets").

[1] The contingency measures do not contain a commitment by CARB.

IV. Administrative Requirements

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 16, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(333)(i)(A)(2), (c)(339), and (c)(340) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(333) * * *

(i) * * *

(A) * * *

(*2*) Amended Rules 403 (except for subdivision h), 403.1 (except for subdivision j), and 1186, as adopted on April 2, 2004.

* * * * *

(339) New and amended plans for the following agency were submitted on January 9, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District (SCAQMD).

(*1*) South Coast 2003 Air Quality Management Plan (AQMP), as adopted by SCAQMD on August 1, 2003, and by California Air Resources Board on October 23, 2003.

(*i*) Baseline and projected emissions inventories in AQMP Chapter III Tables 3–1A and 3–3A, in Appendix III Tables A–1, A–2, A–3, A–5, and A–7, and in Appendix V Attachment 4; SCAQMD commitment to adopt and implement control measures CMB–07, CMB–09, WST–01, WST–02, PRC–03, BCM–07, BCM–08, MSC–04, MSC–06, TCB–01 in AQMP Chapter 4 Table 4–8A, and in Appendix IV–A); PM–10 reasonable further progress in AQMP Chapter 6, Table 6–1 and in Appendix V Chapter 2; contingency measures CTY–01, CTY–14, TCB–01 in Appendix IV–A Section 2; PM–10 attainment demonstration in AQMP Chapter 5, and in Appendix V Chapter 2; and motor vehicle emissions budgets in ''2003 South Coast AQMP On-Road Motor Vehicle Emissions Budgets.''

(*2*) 2003 Coachella Valley PM–10 State Implementation Plan, as adopted by SCAQMD on August 1, 2003, and by California Air Resources Board on October 23, 2003.

(*i*) Baseline and projected emissions inventories in Tables 2–2, 2–3, 2–4, and 2–5; reasonable further progress in Tables 2–9 and 2–7; attainment demonstration in Chapter 3; and motor vehicle emissions budgets in ''2003 Coachella Valley PM–10 SIP On-Road Motor Vehicle Emissions Budgets.''

* * * * *

(340) New and amended rules for the following agencies were submitted on November 16, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District (SCAQMD).

(*1*) Amended Handbooks for Rules 403 (Chapters 5, 7, and 8) and 403.1 (Chapters 2, 3, 4, and 7), as adopted on April 2, 2004.

(B) Plan revisions for the Coachella Valley Planning Area.

(*1*) Fugitive dust control ordinances for: City of Cathedral City Ordinance No. 583 (1/14/04), City of Coachella Ordinance No. 896 (10/8/03), City of Desert Hot Springs Ordinance No. 2003–16 (10/7/03), City of Indian Wells Ordinance No. 545 (11/6/03), City of Indio Ordinance No. 1357 (12/3/03), City of La Quinta Ordinance No. 391 (12/2/03), City of Palm Desert Ordinance No. 1056 (11/13/03), City of Palm Springs Ordinance No. 1639 (11/5/03), City of Rancho Mirage Ordinances No. 855 (12/18/03) and No. 863 (4/29/04), and County of Riverside Ordinance No. 742.1 (1/13/04).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IN–0009; FRL–7995–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Greene County and Jackson County 8-Hour Ozone Nonattainment Areas To Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is making determinations that the Greene County and Jackson County ozone nonattainment areas have attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). These determinations are based on three years of complete, quality-assured ambient air quality monitoring data for the 2002–2004 seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the areas.

EPA is approving requests from the State of Indiana to redesignate the Greene County and Jackson County areas to attainment of the 8-hour ozone NAAQS. These requests were submitted by the Indiana Department of Environmental Management (IDEM) on July 15, 2005 and supplemented on September 6, 2005, September 7, 2005, October 6, 2005, and October 20, 2005. In approving these requests, EPA is also approving the State's plans for maintaining the 8-hour ozone NAAQS through 2015 in these areas as a revision to the Indiana State Implementation Plan (SIP). EPA is also finding adequate and approving the State's 2015 Motor Vehicle Emission Budgets (MVEBs) for these areas.

DATES: This rule is effective on December 29, 2005, unless EPA receives adverse written comments by December 14, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IN–0009, by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *mooney.john@epa.gov.*

4. Fax: (312) 886–5824.

5. Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

6. Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IN–0009. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided and may be made available online at *http://docket.epa.gov/rmepub/*, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen D' Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

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

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I. What Actions Is EPA Taking?

EPA is taking several related actions. EPA is making determinations that the Greene County and Jackson County, Indiana nonattainment areas have attained the 8-hour ozone standard and that Greene and Jackson Counties have met the requirements for redesignation under section 107(d)(3)(E). EPA is thus approving requests to change the legal designations of the Greene County and Jackson County areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also approving Indiana's maintenance plan SIP revisions for Greene and Jackson Counties (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep Greene and Jackson Counties in attainment of the ozone NAAQS for the next 10 years. Additionally, EPA is announcing its action on the Adequacy Process for the newly-established 2015 MVEBs. The Adequacy comment periods for the 2015 MVEBs began on August 2, 2005, with EPA's posting of the availability of these submittals on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/transp/conform/adequacy.htm*). The Adequacy comment periods for these MVEBs ended on September 1, 2005. No requests for these submittals or adverse comments on these submittals were received during the Adequacy comment periods. Please see the Adequacy Section of this rulemaking for further explanation on this process. Therefore, we are finding adequate and approving the State's 2015 MVEBs for transportation conformity purposes.

II. What Is the Background for These Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Greene and Jackson Counties were designated unclassifiable/attainment under the 1-hour ozone NAAQS, which was revoked on June 15, 2005. On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard.

On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some ozone nonattainment areas are subject only to the provisions of subpart 1. Other ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, (69 FR 23951) an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour design values. Both Greene and Jackson Counties were designated as subpart 1, 8-hour ozone nonattainment areas by EPA on April 30, 2004, (69 FR 23857) based on air quality monitoring data from 2001–2003.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm) when rounding is considered. (See 69 FR 23857 (April 30, 2004) for further information). The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of part 50.

On July 15, 2005, Indiana requested that EPA redesignate Greene and Jackson Counties to attainment for the 8-hour ozone standard. These requests were supplemented with submittals dated September 6, 2005, September 7, 2005, October 6, 2005, and October 20, 2005. The redesignation requests included three years of complete, quality-assured data for the period of 2002 through 2004, indicating the 8-hour NAAQS for ozone had been attained for Greene and Jackson Counties. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard and the area meets the other four CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

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

''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, dated November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On July 15, 2005, Indiana requested redesignation of Greene County and Jackson County to attainment for the 8-hour ozone standard. Indiana supplemented these requests with submittals dated September 6, 2005, September 7, 2005, October 6, 2005, and October 20, 2005. EPA believes that the areas have attained the standard and have met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

V. What Is the Effect of These Actions?

Approval of the redesignation requests would change the official designation of the areas for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Indiana SIP plans for maintaining the 8-hour ozone NAAQS through 2015. The maintenance plans include contingency measures to remedy future violations of the 8-hour NAAQS, and establish MVEBs for the year 2015 of 1.46 and 1.65 tons per day (tpd) VOC and 1.54 and 3.18 tpd NO_X for Greene and Jackson Counties, respectively.

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

A. Attainment Determination and Redesignation

EPA is making determinations that the Greene County and Jackson County nonattainment areas have attained the 8-hour ozone standard and that the areas have met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determinations is as follows:

1. The Areas Have Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

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

IDEM submitted ozone monitoring data for the 2002 to 2004 ozone seasons. The State quality assures monitoring data in accordance with 40 CFR 58.10 and the Indiana Quality Assurance Manual and records the data in the AIRS database, thus making the data publicly available. IDEM operates one ozone monitor in Greene County (18–055–0001) and one ozone monitor in Jackson County (18–071–0001). The data for 2002–2004 have been quality assured and are recorded in AIRS. For Greene County, data completeness was 100% for 2002–2004. For Jackson County, data completeness averaged 100%, 100% and 98% in 2002, 2003 and 2004, respectively. The four highest 8-hour average readings for the Greene County and Jackson County ozone monitoring sites for the years 2002 to 2004 are presented in Tables 1 and 2 below:

TABLE 1.—MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AT THE GREENE COUNTY MONITOR FROM 2002–2004 (PPM)

Year	1st max 8-hour (ppm)	2nd max 8-hour (ppm)	3rd max 8-hour (ppm)	4th max 8-hour (ppm)
2002	0.097	0.095	0.095	0.093
2003	0.097	0.092	0.092	0.088
2004	0.076	0.075	0.075	0.073
2002–2004 average of 4th max 8-hour averages (ppm)				0.084

TABLE 2.—MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AT THE JACKSON COUNTY MONITOR FROM 2002–2004 (PPM)

Year	1st max 8-hour (ppm)	2nd max 8-hour (ppm)	3rd max 8-hour (ppm)	4th max 8-hour (ppm)
2002	0.094	0.093	0.091	0.090
2003	0.084	0.082	0.082	0.082

TABLE 2.—MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AT THE JACKSON COUNTY MONITOR FROM 2002–2004 (PPM)—Continued

Year	1st max 8-hour (ppm)	2nd max 8-hour (ppm)	3rd max 8-hour (ppm)	4th max 8-hour (ppm)
2004	0.076	0.070	0.069	0.067
2002–2004 average of 4th max 8-hour averages (ppm)				0.079

It should be noted that preliminary 2005 monitoring data for Greene and Jackson Counties show that the areas continue to attain the 8-hour ozone standard.

In addition, as discussed below with respect to the maintenance plan, IDEM has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Indiana provide an adequate demonstration that Greene and Jackson Counties have attained the 8-hour ozone NAAQS.

2. The Areas Have Met All Applicable Requirements Under Section 110 and Part D; and the Areas Have Fully Approved SIPs Under Section 110(k). (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Indiana has met all currently applicable SIP requirements for purposes of redesignation for Greene and Jackson Counties under section 110 of the CAA (general SIP requirements). We have also determined that the Indiana SIP meets all SIP requirements currently applicable for purposes of redesignation under Part D of Title I of the CAA (requirements specific to Subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we have determined that the Indiana SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these determinations, we have ascertained what SIP requirements are applicable to the areas for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

a. Greene and Jackson Counties Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, to qualify for redesignation of an area to attainment, the state and the area must meet the relevant CAA requirements that come due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465–66 (Mar. 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements. Section 110(a) of title I of the CAA contains the general requirements for a SIP. General SIP elements and requirements are delineated in section 110(a)(2). These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; enforceable emission limitations and other control measures, means or techniques; provisions for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting; provisions for air quality modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call,[1] Clean Air Interstate Rule (CAIR) (70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

We believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176,

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call, requiring the District of Columbia and 22 states, including Indiana, to reduce their statewide emissions of NO_X in order to reduce the transport of ozone and ozone. In compliance with EPA's NO_X SIP call, IDEM has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Indiana's rules as fulfilling Phase I of the NO_X SIP Call on November 8, 2001 (66 FR 56465). On December 11, 2003 (68 FR 69025) EPA approved revisions to these rules.

October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation requests. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements.

Part D Requirements. EPA has determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA since no requirements applicable for purposes of redesignation became due for the 8-hour ozone standard prior to submission of the Greene County or Jackson County redesignation request. Under part D, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Greene and Jackson Counties were both classified as subpart 1 nonattainment areas, and therefore subpart 2 requirements do not apply.

Part D, Subpart 1 applicable SIP requirements. For purposes of evaluating these redesignation requests, the applicable part D, subpart 1 SIP requirements for Greene and Jackson Counties are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

No requirements applicable for purposes of redesignation under part D became due prior to submission of the redesignation requests, and, therefore, none is applicable to the area for purposes of redesignation. Since the State of Indiana has submitted complete ozone redesignation requests for Greene and Jackson Counties prior to the deadline for any submissions required for purposes of redesignation, we have determined that these requirements do not apply to the Greene County and Jackson County areas for purposes of redesignation.

Furthermore, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR, since PSD requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Indiana has demonstrated that the areas will be able to maintain the standard without part D NSR in effect, and therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in Greene and Jackson Counties upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

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

EPA approved Indiana's general conformity SIP on January 14, 1998 (63 FR 2146). Indiana does not have a Federally approved transportation conformity SIP. However, conformity analyses are performed pursuant to EPA's Federal conformity rules. Indiana has submitted on-highway motor vehicle budgets for Greene and Jackson Counties of 1.46 and 1.65 tpd of VOC and 1.54 and 3.18 tpd of NO_X, respectively, based on the areas' 2015 level of emissions. Greene and Jackson Counties must use the motor vehicle emissions budgets from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995) (Tampa, Florida). Thus, the areas have satisfied all applicable requirements under section 110 and part D of the CAA.

b. Greene and Jackson Counties Have a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the Indiana SIP for Greene and Jackson Counties under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Greene and Jackson Counties under the 1-hour ozone standard. No Greene or Jackson County area SIP provisions are currently

disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are, therefore, not applicable requirements for purposes of redesignation.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions. (Section 107(d)(3)(E)(iii))

EPA believes that Indiana has demonstrated that the observed air quality improvement in Greene and Jackson Counties is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 1999 and 2002, one of the years Greene and Jackson Counties monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Indiana has implemented in recent years. Greene and Jackson Counties are both rural and their air quality is significantly impacted by the transport of ozone from upwind counties. Therefore, local controls as well as controls implemented in upwind counties are relevant to the improvement in air quality in both Greene and Jackson Counties.

a. Permanent and enforceable controls implemented.

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

Reasonably Available Control Technology (RACT). Greene and Jackson Counties were not previously required to be covered by RACT regulations for existing sources under the CAA. However, Indiana has implemented statewide RACT controls through the following regulations:

326 IAC 8–1–6 Best Available Control Technology (BACT) for some Sources;

326 IAC 8–2 Surface Coating Emission Limitations;

326 IAC 8–3 Organic Solvent Degreasing Operations;

326 IAC 8–4 Petroleum Sources; and

326 IAC 8–5 Miscellaneous Operations

NO_X rules. In compliance with EPA's NO_X SIP call, Indiana developed rules to control NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. These rules required sources to begin reducing NO_X emissions in 2004, with emission reductions increasing to 31 percent statewide by 2007. It should be noted that statewide NO_X emissions actually began to decline in 2002 as sources phased in emission controls needed to comply with the State's NO_X emission control regulations. From 2004 on, NO_X emissions from EGUs are capped at a statewide total well below pre-2002 levels. It should be noted that NO_X emissions are expected to further decline as the State meets the requirements of EPA's Phase II NO_X SIP call (69 FR 21604).

Federal Emission Control Measures. Reductions in VOC and NO_X emissions have occurred statewide as a result of Federal emission control measures, with additional emission reductions expected to occur in the future as additional emission controls are implemented. Federal emission control measures have included: the National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule (69 FR 38958). This rule will reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

b. Emission Reductions

Indiana is using 1999 for the nonattainment inventory. Emissions estimates were taken directly from the National Emissions Inventory (NEI), with the following exceptions. Point source emissions information was compiled from IDEM's 1999 annual emissions statement database. Onroad emissions for Jackson county were calculated using MOBILE 6.2.

For comparison, IDEM developed an inventory for 2002, one of the years the area monitored attainment of the 8-hour NAAQS. The point source sector information was compiled from IDEM's 2002 annual emissions statement database and the 2002 EPA Air Markets acid rain database. The area source sector information was taken from the Indiana 2002 periodic inventory submitted to EPA. These projections were made from the U.S. Department of Commerce Bureau of Economic Analysis growth factors with some updated local information. The nonroad sector emission estimates were developed using NONROAD with the following modifications. Emissions were estimated for two nonroad categories not included in NONROAD, commercial marine vessels and railroads. Recreational motorboat population and spatial surrogates (used to assign emissions to each county) were updated. The populations for the construction equipment category were reviewed and updated based upon surveys completed in the Midwest and the temporal allocation for agricultural sources was also updated. The onroad sector emissions were calculated using MOBILE 6.2.

Based on the inventories described above, Indiana's submittal documents changes in VOC and NO_X emissions from 1999 to 2002 for Greene and Jackson Counties. IDEM also documented this information for upwind areas in Southwest (Daviess, Dubois, Gibson, Knox, Martin, Pike, Vanderburgh and Warrick Counties) and South central (Clark, Floyd, Harrison, Jefferson and Scott Counties) Indiana. (We will refer to these areas, collectively, as Southern Indiana.) Emissions data are shown in Tables 3 through 7 below.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 1999 IN TONS PER SUMMER DAY (TPSD)

	Greene		Jackson		Southern Indiana	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	1.42	0.25	1.64	0.48	30.87	449.88
Area	4.80	0.32	8.74	1.05	96.03	11.42
Nonroad	0.78	2.15	0.95	3.23	17.78	51.2

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 1999 IN TONS PER SUMMER DAY (TPSD)—Continued

	Greene		Jackson		Southern Indiana	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Onroad	2.44	3.83	4.02	10.30	48.72	73.09
Total	9.44	6.55	15.35	15.06	193.40	585.59

TABLE 4.—TOTAL VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2002 IN TONS PER SUMMER DAY (TPSD)

	Greene		Jackson		Southern Indiana	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	0.51	0.68	1.72	0.62	28.07	385.62
Area	3.73	0.25	5.91	0.72	69.95	9.11
Nonroad	1.43	1.61	1.11	2.93	20.42	26.13
Onroad	2.74	3.41	3.33	8.30	43.23	72.58
Total	8.41	5.95	12.07	12.57	161.67	493.44

TABLE 5.—COMPARISON OF 1999 AND 2002 VOC AND NO_X EMISSIONS FOR GREENE COUNTY (TPSD)

Sector	VOC			NO_X		
	1999	2002	Net change (1999–2002)	1999	2002	Net change (1999–2002)
Point	1.42	0.51	−0.91	0.25	0.68	0.43
Area	4.80	3.73	−1.07	0.32	0.25	−0.07
Nonroad	0.78	1.43	0.65	2.15	1.61	−0.54
Onroad	2.44	2.74	0.30	3.83	3.41	−0.42
Total	9.44	8.41	−1.03	6.55	5.95	−0.60

TABLE 6.—COMPARISON OF 1999 AND 2002 VOC AND NO_X EMISSIONS FOR JACKSON COUNTY (TPSD)

Sector	VOC			NO_X		
	1999	2002	Net change (1999–2002)	1999	2002	Net change (1999–2002)
Point	1.64	1.72	0.08	0.48	0.62	0.14
Area	8.74	5.91	−2.83	1.05	0.72	−0.33
Nonroad	0.95	1.11	0.16	3.23	2.93	−0.30
Onroad	4.02	3.33	−0.69	10.30	8.30	−2.00
Total	15.35	12.07	−3.28	15.06	12.57	−2.49

TABLE 7.—COMPARISON OF 1999 AND 2002 VOC AND NO_X EMISSIONS FOR SOUTHWEST INDIANA (TPSD)

Sector	VOC			NO_X		
	1999	2002	Net change (1999–2002)	1999	2002	Net change (1999–2002)
Point	20.79	19.91	−0.88	324.31	274.99	−49.32
Area	56.92	41.70	−15.22	7.03	5.55	−1.48
Nonroad	12.18	13.45	1.27	33.16	17.28	−15.88
Onroad	28.93	23.97	−4.96	41.21	35.18	−6.03
Total	118.82	99.03	−19.79	405.71	333.00	−72.71

Table 5 shows that Greene County reduced VOC emissions by 1.03 tpd and NO_X emissions by 0.60 tpd between 1999 and 2002. Table 6 shows that Jackson County reduced VOC emissions by 3.28 tpd and NO_X emissions by 2.49 tpd between 1999 and 2002. Table 7 shows that the upwind area in Southern Indiana reduced VOC emissions by 19.79 tpd and NO_X emissions by 72.71 tpd between 1999 and 2002.

Based on the information summarized above, Indiana has adequately demonstrated that the improvement in

air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA. (Section 107(d)(3)(E)(iv))

In conjunction with its requests to redesignate the Greene County and Jackson County nonattainment areas to attainment status, Indiana submitted SIP revisions to provide for the maintenance of the 8-hour ozone NAAQS in Greene and Jackson Counties for at least 10 years after redesignation.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following items: the attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The State developed an inventory for 2002, one of the years the area monitored attainment of the 8-hour NAAQS. Inventory methodology is described in section 3 above. The attainment level of emissions are summarized in Table 8 below.

TABLE 8.—VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2002 (TPSD)

	Greene County		Jackson County		Southern Indiana	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	0.51	0.68	1.72	0.62	19.91	274.99
Area	3.73	0.25	5.91	0.72	41.70	5.55
Nonroad	1.43	1.61	1.11	2.93	13.45	17.28
Onroad	2.74	3.41	3.33	8.30	23.97	35.18
Total	8.41	5.95	12.07	12.57	99.03	333.00

c. Demonstration of Maintenance

As part of the redesignation requests, IDEM submitted revisions to the 8-hour ozone SIPs to include 10-year maintenance plans as required by section 175A of the Clean Air Act. For Greene County, this demonstration shows maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year emission levels. For Jackson County this demonstration consists of a combination of emissions projections and modeling. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–25432 (May 12, 2003).

Using the 2002 attainment inventory as the base year, IDEM developed projected emissions inventories for 2010 and 2015. Onroad mobile source emissions were projected using Mobile 6.2 in accordance with ''Procedures for Preparing Emissions Projections,'' EPA–45/4–91–019. Emissions for the point, area and nonroad sectors were projected using growth and control files developed by the Midwest Regional Planning Organization. This method was used to ensure that the inventories used for redesignation are consistent with modeling performed in the future. These emission estimates are presented in Tables 9–11 below.

TABLE 9.—COMPARISON OF 2002–2015 VOC AND NO_X EMISSIONS FOR GREENE COUNTY (TPSD)

Sector	VOC				NO_X			
	2002	2010	2015	Net change 2002–2015	2002	2010	2015	Net change 2002–2015
Point	0.51	0.59	0.64	0.13	0.68	0.46	0.47	−0.21
Area	3.73	4.33	4.74	1.01	0.25	0.27	0.27	0.02
Nonroad	1.43	1.14	0.94	−0.49	1.61	1.37	1.22	−0.39
Onroad	2.74	1.81	1.33	−1.41	3.41	2.09	1.40	−2.01
Total	8.41	7.87	7.65	−0.76	5.95	4.19	3.36	−2.59

TABLE 10.—COMPARISON OF TOTAL 2002–2015 VOC AND NO_X EMISSIONS FOR JACKSON COUNTY (TPSD)

Sector	VOC				NO_X			
	2002	2010	2015	Net change 2002–2015	2002	2010	2015	Net change 2002–2015
Point	1.72	2.31	2.70	0.98	0.62	1.20	1.58	0.96
Area	5.91	6.91	7.64	1.73	0.72	0.77	0.80	0.08
Nonroad	1.11	0.71	0.62	−0.49	2.93	2.27	1.91	−1.02
Onroad	3.33	2.23	1.65	−1.68	8.30	5.10	3.03	−5.27
Total	12.07	12.16	12.61	0.54	12.57	9.34	7.32	−5.25

TABLE 11.—COMPARISON OF 2002–2015 VOC AND NO_X EMISSIONS FOR SOUTHERN INDIANA (TPSD)

Sector	VOC				NO_X			
	2002	2010	2015	Net change 2002–2015	2002	2010	2015	Net change 2002–2015
Point	19.91	24.21	29.08	9.17	274.99	108.22	109.60	−165.39
Area	41.70	48.73	53.72	12.02	5.55	5.96	6.12	0.57
Nonroad	13.45	9.54	8.16	−5.29	17.28	13.69	10.89	−6.39
Onroad	23.97	14.20	10.13	−13.84	35.18	20.15	11.91	−23.27
Total	99.03	96.68	101.09	2.06	333.00	148.02	138.52	−194.48

The emission projections show that in Greene County emissions are not expected to exceed the level of the 2002 attainment year inventory during the 10-year maintenance period. Greene County VOC and NO_X emissions are projected to decrease by 0.76 tpd and 2.59 tpd, respectively. In Jackson County, NO_X emissions are projected to decrease by 5.25 tpd. Although VOC emissions are projected to increase by 0.54 tpd, total ozone precursors should decrease by 4.71 tpd. In addition, emissions in the upwind area of Southern Indiana are projected to decrease by 194.48 tpd for NO_X and increase by 2.06 tpd for VOC, a 192.42 tpd decrease in total ozone precursors.

Although VOC emissions are projected to increase slightly over the maintenance period in Jackson County and in Southern Indiana, the dramatic reduction in NO_X emissions over the same time period has been demonstrated, through modeling, to be more than sufficient to maintain the standard. IDEM notes that available modeling data demonstrate that Jackson and Greene Counties are significantly impacted by ozone and ozone precursor transport and that NO_X emission reductions are significantly beneficial for reducing 8-hour ozone concentrations in both counties. IDEM draws the following conclusions from the various ozone modeling analyses that have addressed the Midwest:

EPA modeling analysis for the Heavy Duty Engine rule. EPA conducted modeling for Tier II vehicle and low-sulfur fuels to support the final rulemaking for the Heavy Duty Engine (HDE) and Vehicle Standards and Highway Diesel Fuel Rule. This modeling, in part, addressed ozone levels in Indiana, including Greene and Jackson Counties. A base year of 1996 was modeled, and the impacts of fuel changes and the NO_X SIP call were addressed for high ozone episodes in 1995. The modeling supports the conclusion that the fuel improvements and the NO_X SIP call result in significant ozone improvements (lower projected ozone concentrations) in Jackson and Greene Counties. Using the modeling results to determine Relative Reduction Factors(RRFs) [2] and considering the 2001–2003 ozone design values for Greene and Jackson Counties (89 ppb and 85 ppb, respectively), IDEM projected the 2007 ozone design values for Greene and Jackson Counties to be 81.4 ppb and 78.6 ppb, respectively. Therefore, the NO_X SIP call and the fuel modifications considered in the ozone modeling were found to significantly improve the ozone levels in Greene and Jackson Counties.

Lake Michigan Air Directors Consortium (LADCO) modeling analysis for the 8-hour ozone standard assessment. LADCO has performed ozone modeling to evaluate the effect of the NO_X SIP call and Tier II/Low Sulfur Fuel Rule on 2007 ozone levels in the Lake Michigan area, which includes Greene and Jackson Counties as well as Southern Indiana. Like the EPA modeling discussed above, this modeling indicates that the 2001–2003 ozone design values for the Greene and Jackson County monitoring sites would be reduced to below-standard levels in 2007 as the result of implementing the NO_X SIP call and the Tier II/Low Sulfur Fuel Rule.

EPA modeling analysis for the Clean Air Interstate Rules (CAIR). EPA conducted modeling in support of the CAIR rulemaking. The modeling was based on 1999–2003 design values. Future year modeling was conducted for Greene and Jackson Counties and future year design values for 2010 and 2015 were evaluated for attainment of the 8-hour ozone NAAQS. Results of the CAIR modeling show that Greene and Jackson Counties will continue to attain the 8-hour ozone NAAQS in 2010. With additional CAIR reductions in 2015, design values continue to decrease.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the areas. A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the

[2] Relative Reduction Factors are fractional changes in peak ozone concentrations projected to occur as the result of assumed changes in precursor emissions resulting from the implementation of emission control strategies. Relative Reduction Factors are derived through ozone modeling and are applied to monitored peak ozone concentrations to project post-control peak ozone levels.

level of emissions during one of the years in which the area met the NAAQS. For example, Greene and Jackson Counties attained the 8-hour ozone NAAQS during the 2002–2004 time period. Indiana uses 2002 as the attainment level of emissions for the areas. The emissions from point, area, nonroad, and mobile sources in 2002 equaled 8.41 tpd of VOC for Greene County. Projected VOC emissions out to the year 2015 equaled 7.65 tpd of VOC. The SIP demonstrates that Greene County will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 0.76 tpd of VOC for 2015. By this same method, 2.59 tpd (*i.e.*, 5.95 tpd less 3.36 tpd) is the safety margin for NO_X for 2015. For Jackson County, 5.25 tpd (*i.e.*, 12.57 tpd less 7.37 tpd) is the safety margin for NO_X for 2015. States are not required to establish safety margins, and Indiana did not include one for 2015 VOC emissions for Jackson County. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Indiana currently operates one ozone monitor in Greene County and one monitor in Jackson County. IDEM has committed to continue operating and maintaining an approved ozone monitor network in accordance with 40 CFR part 58.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in Greene and Jackson Counties depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State's plan for verifying continued attainment of the 8-hour standard in Greene and Jackson Counties consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. In addition, IDEM will periodically revise and review the VOC and NO_X emissions inventories for Greene and Jackson Counties to ensure that emissions growth is not threatening the continued attainment of the 8-hour ozone standard. Emissions inventories will be revised for 2005, 2008, and 2011, as necessary to comply with the emissions inventory reporting requirements of the CAA. The updated emissions inventories will be compared to the 2002 emissions inventories to assess emission trends and assure continued attainment of the 8-hour ozone standard.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted contingency plans for Greene and Jackson Counties to address a possible future ozone air quality problem. The contingency plans adopted by Indiana have two levels of responses, depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level) or has occurred or is imminent (Action Level).

A Warning Level response will occur when an annual (1-year) fourth-high monitored daily peak 8-hour ozone concentration of 88 ppb or higher is monitored in a single ozone season at any monitor within the ozone maintenance area. A Warning Level response will consist of Indiana performing a study to determine whether the high ozone concentration indicates a trend toward high ozone levels or whether emissions are increasing. If a trend toward higher ozone concentrations exists and is likely to continue, the emissions control measures necessary to reverse the trend will be determined taking into consideration ease and timing of implementation, as well as economic and social considerations. The study, including applicable recommended next steps, will be completed within 12 months from the close of the ozone season with the recorded high ozone concentration. If emission controls are needed to reverse the adverse ozone trend, the procedures for emission control selection under the Action Level response will be followed.

An Action Level response will occur when a two-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 85 ppb occurs at any monitor in the ozone maintenance area. A violation of the standard (a 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 85 ppb or greater) also triggers an Action Level response. In this situation, IDEM will determine the additional emission control measures needed to assure future attainment of the 8-hour ozone NAAQS. IDEM will focus on emission control measures that can be implemented in a short time, and selected emission control measures will be adopted and implemented within 18 months from the close of the ozone season with ozone monitoring data that prompted the Action Level Response. Adoption of any additional emission control measures will be subject to the necessary administrative and legal procedures, including publication of notices and the opportunity for public comment and response. If a new emission control measure is adopted by the State (independent of the ozone contingency needs) or is adopted at a Federal level and is scheduled for implementation in a time frame that will mitigate an ozone air quality problem, IDEM will determine whether this emission control measure is sufficient to address the ozone air quality problem. If IDEM determines that existing or soon-to-be-implemented emissions control measures should be adequate to correct the ozone standard violation problem, IDEM may determine that additional emission control measures at the State level may be unnecessary. Regardless, IDEM will submit to the EPA an analysis to demonstrate that proposed emission control measures are adequate to provide for future attainment of the 8-hour ozone NAAQS in a timely manner. EPA notes that it is construing this provision to require that any non-Federal control measure relied upon in lieu of a contingency measure be included in the State SIP or be submitted to EPA for approval into the SIP.

Contingency measures contained in the maintenance plans are those emission controls or other measures that Indiana may choose to adopt and implement to correct possible air quality problems. These include, but are not limited to, the following:

i. Lower Reid vapor pressure gasoline requirements;

ii. Broader geographic applicability of existing emission control measures;

iii. Tightened RACT requirements on existing sources covered by EPA Control Technique Guidelines (CTGs) issued in response to the 1990 CAA amendments;

iv. Application of RACT to smaller existing sources;

v. Vehicle Inspection and Maintenance (I/M);

vi. One or more Transportation Control Measure (TCM) sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions, to be selected from the following:

A. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;

B. Transit improvements;

C. Traffic flow improvements; and

D. Other new or innovative transportation measures not yet in widespread use that affect State and local governments as deemed appropriate;

vii. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

viii. Controls on consumer products consistent with those adopted elsewhere in the United States;

ix. VOC or NO_X emission offsets for new or modified major sources;

x. VOC or NO_X emission offsets for new or modified minor sources;

xi. Increased ratio of emission offset required for new sources; and,

xii. VOC or NO_X emission controls on new minor sources (with VOC or NO_X emissions less than 100 tons per year).

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Indiana commits to submit to the EPA updates of the ozone maintenance plans eight years after redesignation of Greene and Jackson Counties to cover an additional 10-year period beyond the initial 10-year maintenance period.

EPA has concluded that the maintenance plans adequately address the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revisions submitted by Indiana for Greene and Jackson Counties meet the requirements of section 175A of the CAA.

B. Adequacy of Indiana's Motor Vehicle Emissions Budgets (MVEBs)

1. How Are MVEBs Developed and What Are the MVEBs for Greene and Jackson Counties?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard). These emission control strategy SIP revisions (e.g., reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

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

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Greene and Jackson Counties' 10-year maintenance plan submissions contain new VOC and NO_X MVEBs for 2015. The availability of the SIP submissions with these 2015 MVEBs was announced for public comment on EPA's Adequacy Web page on August 2, 2005, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The EPA public comment period on adequacy of the 2015 MVEBs for Greene and Jackson Counties closed on September 1, 2005. No requests for this submittal or adverse comments on this submittal were received during the Adequacy comment period. On October 20, 2005 (70 FR 31128), EPA published notices of adequacy to notify the public that we had found the 2015 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is approving the MVEBs for use to determine transportation conformity in Greene and Jackson Counties because EPA has determined that the areas can maintain attainment of the 8-hour ozone NAAQS for the relevant 10-year period with mobile source emissions at the levels of the MVEBs. IDEM has determined the 2015 MVEBs for Greene County to be 1.46 tpd for VOC and 1.54 tpd for NO_X. It should be noted that these MVEBs exceed the onroad mobile source VOC and NO_X emissions projected by IDEM for 2015, as

summarized in Table 9 above (''onroad'' source sector). IDEM decided to include safety margins (described further below) of 0.13 tpd of VOC and 0.14 tpd for NO_X in the MVEBs to provide for mobile source growth. Indiana has demonstrated that Greene County can maintain the 8-hour ozone NAAQS with mobile source emissions of 1.46 tpd of VOC and 1.54 tpd of NO_X in 2015, including the allocated safety margins, since emissions will still remain under attainment year emission levels.

IDEM has determined the 2015 MVEBs for Jackson County to be 1.65 tpd for VOC and 3.18 tpd for NO_X. It should be noted that the MVEB exceeds the onroad mobile source NO_X emissions projected by IDEM for 2015, as summarized in Table 10 above (''onroad'' source sector). IDEM decided to include a safety margin of 0.15 tpd for NO_X in the MVEB to provide for mobile source growth. Indiana has demonstrated that Jackson County can maintain the 8-hour ozone NAAQS with mobile source emissions of 3.18 tpd of NO_X in 2015, including the allocated safety margin, since NO_X emissions will still remain under attainment year emission levels.

2. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 9, Greene County VOC and NO_X emissions are projected to have safety margins of 0.76 tpd for VOC and 2.59 tpd for NO_X in 2015 (the difference between the attainment year, 2002, emissions and the 2015 emissions for all sources in Greene County). As noted in Table 10, Jackson County NO_X emissions are projected to have a safety margin of 5.25 tpd. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by IDEM contain safety margins for mobile sources significantly smaller than the allowable safety margins reflected in the total emissions for Greene and Jackson Counties. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the onroad mobile source emissions for 2015 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VII. Final Actions

EPA is making determinations that Greene and Jackson Counties have attained the 8-hour ozone NAAQS, and EPA is approving the redesignations of Greene and Jackson Counties from nonattainment to attainment for the 8-hour ozone NAAQS. After evaluating Indiana's redesignation requests, EPA has determined that they meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. The final approvals of these redesignation requests would change the official designations for Greene and Jackson Counties from nonattainment to attainment for the 8-hour ozone standard.

EPA is also approving the maintenance plan SIP revisions for Greene and Jackson Counties. Approval of the maintenance plans is based on Indiana's demonstration that the plans meet the requirements of section 175A of the CAA, as described more fully above. Additionally, EPA is finding adequate and approving the 2015 MVEBs submitted by Indiana in conjunction with the redesignation requests.

We are publishing these actions without prior proposal because we view these actions as noncontroversial and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the redesignations and maintenance plans if relevant adverse written comments are filed. These rules will be effective December 29, 2005 without further notice unless we receive relevant adverse written comments by December 14, 2005. If we receive such comments with respect to an area addressed by this rule, we will publish a timely withdrawal of the action affecting that area, informing the public that the rule will not take effect with respect to that area. EPA will respond to the public comments in a subsequent final rule based on the proposed action for that area. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective December 29, 2005.

VIII. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 1, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations, are amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.777 is amended by adding paragraph (bb) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(bb) Approval—On July 15, 2005, Indiana submitted requests to redesignate Greene and Jackson Counties to attainment of the 8-hour ozone National Ambient Air Quality Standard. These requests were supplemented with submittals dated September 6, 2005, September 7, 2005, October 6, 2005, and October 20, 2005. As part of the redesignation requests, the State submitted maintenance plans as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. Also included were motor vehicle emission budgets for use to determine transportation conformity in Greene and Jackson Counties. The 2015 motor vehicle emission budgets for Greene County are 1.46 tpd for VOC and 1.54 tpd for NO_X. The 2015 motor vehicle emission budgets for Jackson County are 1.65 tpd for VOC and 3.18 tpd for NO_X.

PART 81—[AMENDED]

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

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

■ 2. Section 81.315 is amended by revising the entries for the Greene Co., IN and Jackson Co., IN areas in the table entitled ''Indiana Ozone (8-Hour Standard)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
	Greene Co., IN:			
Greene County	12/29/05	Attainment.		
* * *	*	*	*	*
	Jackson Co., IN:			
Jackson County	12/29/05	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 05–22466 Filed 11–10–05; 8:45 am]
BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.
ACTION: Direct final rule.

SUMMARY: Pursuant to the Antarctic Conservation Act of 1978, The National Science Foundation (NSF) is amending its regulations to designate additional Antarctic Specially Protected Areas (ASPA). Also, NSF is adding to this rule in Antarctica designated by the Treaty Parties as Antarctic Specially Managed Areas (ASMA) and Historical Sites or Monuments (HSM). These additions only reflect measures already adopted by the Antarctic Treaty parties at Antarctic Treaty Consultative Meetings (ATCM). Finally, the regulation is being revised to correct some typographical and numbering errors.

DATES: November 14, 2005.

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Office of the General Counsel, at 703–292–8060, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

SUPPLEMENTARY INFORMATION: The Antarctic Conservation Act of 1978, as amended, (''ACA'') (16 U.S.C. 2401 *et seq.*) implements the Protocol on Environmental Protection to the Antarctic Treaty (''the Protocol''). Annex II of the Protocol contains provisions for conservation of native Antarctic plants and animals. Annex V contains provisions for the protection of specially designated areas. Section 2405 of title 16 of the ACA directs the Director of the National Science Foundation to issue such regulations as are necessary and appropriate to implement Annexes II and V to the Protocol.

The Antarctic Treaty Parties periodically adopt measures to establish additional specially protected areas, specially managed areas and historical sites or monuments in Antarctica. This rule is being revised to add two additional Antarctic specially protected areas, all specially managed areas and a comprehensive list of designated historical sites and monuments in Antarctica. The revisions also reiterate the ACA's prohibition on entering or engaging in activities within an Antarctic Specially Protected Area unless authorized by permit as well as the ACA's blanket prohibition on damaging, removing or destroying a Historic Site or Monument. No public comment is needed the addition of these areas or sites merely implements measures adopted by the Treaty Parties at various ATCM meetings.

Finally, these amendments correct typographical errors in the names and numerical listings of several specially protected areas previously published in § 670.29.

Determinations

NSF has determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Management and Budget. This rule involves a foreign affairs function of the United States and is, therefore, exempt from the notice requirements of section 553 of the Administrative Procedures Act and from regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this rule is exempt from the Regulatory Flexibility Act, it has nonetheless been determined that this rule will not have a significant impact on a substantial number of small businesses. For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), these amendments to the existing regulations do not change the collection of information requirements contained in NSF's existing regulations, which have already been approved by the Office of Management and Budget.

List of Subjects in 45 CFR Part 670

Administrative practice and procedure, Antarctica, Exports, Imports, Plants, Reporting and recordkeeping requirements, Wildlife.

Dated: October 12, 2005.

Lawrence Rudolph,
General Counsel.

■ Pursuant to the authority granted by 16 U.S.C. 2405(a)(1), NSF hereby amends 45 CFR Part 670 as set forth below:

PART 670—[AMENDED]

■ 1. The authority citation for Part 670 continues to read as follows:

Authority: 16 U.S.C. 2405, as amended.

■ 2. Section 670.29 is revised to read as follows:

§ 670.29 Designation of Antarctic specially protected areas, specially managed areas and historic sites and monuments.

The following areas have been designated by the Antarctic Treaty Parties for special protection and are hereby designated as Antarctic Specially Protected Areas (ASPA). The Antarctic Conservation Act of 1978, as amended, prohibits, unless authorized by a permit, any person from entering or engaging in activities within an ASPA. Detailed maps and descriptions of the sites and complete management plans can be obtained from the National Science Foundation, Office of Polar Programs, National Science Foundation, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

ASPA 101 Taylor Rookery, Mac. Robertson Land, East Antarctica
ASPA 102 Rookery Islands, Holme Bay, Mac. Robertson Land, East Antarctica
ASPA 103 Ardery Island and Odbert Island, Budd Coast, Wilkes Land, East Antarctica
ASPA 104 Sabrina Island, Balleny Islands
ASPA 105 Beaufort Island, Ross Sea (see ASPA 124)
ASPA 106 Cape Hallett, Victoria Land
ASPA 107 Emperor Island, Dion Islands, Marguerite Bay, Antarctic Peninsula (see Measure 1, 2002)
ASPA 108 Green Island, Berthelot Islands, Antarctic Peninsula
ASPA 109 Moe Island, South Orkney Islands
ASPA 110 Lynch Island, South Orkney Islands
ASPA 111 Southern Powell Island and adjacent Islands, South Orkney Islands
ASPA 112 Coppermine Peninsula, Robert Island, South Shetland Islands
ASPA 113 Litchfield Island, Arthur Harbour, Anvers Island, Palmer Archipelago
ASPA 114 Northern Coronation Island, South Orkney Islands
ASPA 115 Lagotellerie Island, Marguerite Bay, Antarctic Peninsula
ASPA 116 'New College Valley', Caughley Beach, Cape Bird, Ross Island
ASPA 117 Avian Island, off Adelaide Island, Antarctic Peninsula
ASPA 118 'Cryptogam Ridge', Mount Melbourne, Victoria Land
ASPA 119 Davis Valley and Forlidas Pond Pond, Dufek Massif
ASPA 120 'Pointe-Géologie Archipelego', Terre Adélie
ASPA 121 Cape Royds, Ross Island
ASPA 122 Arrival Heights, Hut Point Peninsula, Ross Island
ASPA 123 Barwick and Balham Valleys (see Measure 1, 2002), Victoria Land
ASPA 124 Cape Crozier, Ross Island
ASPA 125 Fildes Peninsula, King George Island, South Shetland Islands
ASPA 126 Byers Peninsula, Livingston Island, South Shetland Islands

ASPA 127 Haswell Island
ASPA 128 Western shore of Admiralty Bay, King George Island
ASPA 129 Rothera Point, Adelaide Island
ASPA 130 'Tramway Ridge', Mount Erebus, Ross Island
ASPA 131 Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land
ASPA 132 Potter Peninsula, '25 de Mayo' (King George) Island, South Shetland Islands
ASPA 133 Harmony Point, west coast of Nelson Island, South Shetland Islands
ASPA 134 Cierva Point and offshore islands, Danco Coast, Antarctic Peninsula
ASPA 135 North-eastern Bailey Peninsula, Budd Coast, Wilkes Land
ASPA 136 Clark Peninsula, Budd Coast, Wilkes Land
ASPA 137 Northwest White Island, McMurdo Sound
ASPA 138 Linnaeus Terrace, Asgaard Range, Victoria Land
ASPA 139 Biscoe Point, Anvers Island
ASPA 140 Parts of Deception Island, South Shetland Islands
ASPA 141 'Yukidori Valley', Langhovde, Lützow-Holmbukta
ASPA 142 Svarthamaren, Mühlig-Hofmannfjella, Dronning Maud Land
ASPA 143 Marine Plain, Mule Peninsula, Vestfold Hills, Princess Elizabeth Land
ASPA 144 'Chile Bay' (Discovery Bay), Greenwich Island, South Shetland Islands
ASPA 145 Port Foster, Deception Island, South Shetland Islands
ASPA 146 South Bay, Doumer Island, Palmer Archipelago
ASPA 147 Ablation Valley-Ganymede Heights, Alexander Island
ASPA 148 Mount Flora, Hope Bay, Antaractic Peninsula
ASPA 149 Cape Shirreff and San Telmo Island, Livingston Island, South Shetland Islands
ASPA 150 Ardley Island, Maxwell Bay, King George Island
ASPA 151 Lions Rump, King George Island, South Shetland Islands
ASPA 152 Western Bransfield Strait off Low Island, South Shetland Islands
ASPA 153 Eastern Dallmann Bay off Brabant Island, Palmer Archipelago
ASPA 154 Botany Bay, Cape Geology, Victoria Land
ASPA 155 Cape Evans, Ross Island
ASPA 156 Lewis Bay, mount Erebus, Ross Island
ASPA 157 Backdoor Bay, Cape Royds, Ross Island
ASPA 158 Hut Point, Ross Island
ASPA 159 Cape Adare, Borchgrevink Coast
ASPA 160 Frazier Islands, Wilkes Land, East Antarctica (see Measure 2, 2003)
ASPA 161 Terra Nova Bay, Ross Sea
ASPA 162 Mawson's Huts, Commonwealth Bay, George V Land, East Antarctica (see Measure 2, 2004)
ASPA 163 Dakshin Gangotri Glacier, Dronning Maud Land
ASPA 164 Scullin and Murray Monoliths, Mac. Robertson Land, East Antarctica

(b) The following areas have been designated by the Antarctic Treaty Parties for special management and have been designated as Antarctic Specially Managed Areas (ASMA). Detailed maps and descriptions of the sites and complete management plans can be obtained from the National Science Foundation, Office of Polar Programs, National Science Foundation, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

ASMA 1 Admiralty Bay, King George Island, South Shetland Islands
ASMA 2 McMurdo Dry Valleys, Southern Victoria Land
ASMA 3 Cape Denison, Commonwealth Bay, George V Land
ASMA 4 Deception Island, South Shetland Islands

(c) The following areas have been designated by the Antarctic Treaty Parties as historic sites or monuments (HSM). The Antarctic Conservation Act of 1978, as amended, prohibits any damage, removal or destruction of a historic site or monument listed pursuant to Annex V to the Protocol. Descriptions of the sites or monuments can be obtained from the National Science Foundation, Office of Polar Programs, National Science Foundation, Room 755, 4201 Wilson Boulevard, Arlington, Virginia 22230.

HSM 1 Flag mast at South Pole
HSM 2 Rock cairn and plaques on Ongul Island, Prins Harald Kyst
HSM 3 Rock cairn and plaques on Proclamation Island, Enderby Land
HSM 4 Bust and plaque at 'Pole of Inaccessibility'
HSM 5 Rock cairn and plaques at Cape Bruce, Mac. Robertson Land
HSM 6 Rock cairn and canister at Walkabout Rocks, Vestfold Hills, Princess Elizabeth Land
HSM 7 Stone and plaque at Mabus Point, Queen Mary Land
HSM 8 Monument sledge and plaque at Mabus Point, Queen Mary Land
HSM 9 Cemetery on Buromskiy Island, Queen Mary Land
HSM 10 Observatory at Bunger Hills, Queen Mary Land
HSM 11 Tractor and plaque at Vostok Station
HSM 14 Ice cave at Inexpressible Island, Terra Nova Bay, Scott Coast
HSM 15 Hut at Cape Royds, Ross Island
HSM 16 Hut at Cape Evans, Ross Island
HSM 17 Cross at Cape Evans, Ross Island
HSM 18 Hut at Hut Point, Ross Island
HSM 19 Cross at Hut Point, Ross Island
HSM 20 Cross on Observation Hill, Ross Island
HSM 21 Hut at Cape Crozier, Ross Island
HSM 22 Hut at Cape Adare, Borchgrevink Coast
HSM 23 Grave at Cape Adare, Borchgrevink Coast
HSM 24 Rock cairn at Mount Betty, Queen Maud Range
HSM 26 Installations at Barry Island, Debenham Islands, Marguerite Bay, Antarctic Peninsula
HSM 27 Cairn with plaque at Megalestris Hill, Petermann Island, Antarctic Peninsula
HSM 28 Cairn, pillar and plaque at Port Charcot, Booth Island, Antarctic
HSM 29 Lighthouse on Lambda Island, Melchior Islands, Antarctic Peninsula
HSM 30 Shelter at Paradise Harbour, Danco Coast, Antarctic Penninsula
HSM 32 Monolith on Greenwich Island, South Shetland Islands
HSM 33 Shelter, cross and plaque on Greenwich Island, South Shetland Islands
HSM 34 Bust on Greenwich Island, South Shetland Islands
HSM 35 Cross and statute on Greenwich Island, South Shetland Islands
HSM 36 Plaque at Potter Cove, King George Island, South Shetland Islands
HSM 37 Statue at Trinity Peninsula, Antarctic Peninsula
HSM 38 Hut of Snow Hill Island, Antarctic Peninsula
HSM 39 Hut at Hope Bay, Trinity Peninsula, Antarctic Peninsula
HSM 40 Bust, grotto, statue, flag mast, graveyard and stele at Hope Bay, Trinity Peninsula, Antarctic Peninsula
HSM 41 Hut and grave at Paulet Island, Antarctic Peninsula
HSM 42 Huts, magnetic observatory and graveyard at Scotia Bay, Laurie Island, South Orkney Islands
HSM 43 Cross at ''Piedrabuena Bay'', Filchner Ice Front, Weddell Sea
HSM 44 Plaque at Nivlisen Ice Front, Princesse Astrid Kyst, Dronning Maud Land
HSM 45 Plaque at Metchnikoff Point, Brabant Island, Antarctic Peninsula
HSM 46 Buildings and installations at Port-Martin, Terre Adélie

HSM 47 Buildings on Ĭle des Pétrels, Terre Adélie
HSM 48 Cross on Ĭle des Pétrels, Terre Adélie
HSM 49 Pillar at Bunger Hill, Queen Mary Land
HSM 50 Plaque at Fildes Peninsula, King George Island, South Shetland Islands
HSM 51 Grave and cross at Admiralty Bay, King George Island, South Shetland Islands
HSM 52 Monolith at Fildes Peninsula, King George Island, South Shetland Islands
HSM 53 Monolith and plaques on Elephant Island, South Shetland Islands
HSM 54 Bust on Ross Island
HSM 55 Buildings and artifacts on Stonington Island, Marguerite Bay, Antarctic Peninsula
HSM 56 Remains of hut and environs at Waterboat Point, Danco Coast, Antarctic Peninsula
HSM 57 Plaque at ''Yankee Bay'' (Yankee Harbour), MacFarlane Strait, Greenwich Island, South Shetland Islands
HSM 59 Cairn on Half Moon Beach, Cape Shirreff, Livingston Island, South Shetland Islands
HSM 60 Plaque and cairn at ''Penguins Bay'', Seymour Island, James Ross Island archipelago
HSM 61 ''Base A'' at Port Lockroy, Goudier Island, off Wiencke Island, Antarctic Peninsula
HSM 62 ''Base F (Wordie House)'' on Winter Island, Argentine Islands
HSM 63 ''Base Y'' on Horseshoe Island, Marguerite Bay, western Graham Land
HSM 64 ''Base E'' on Stonington Island, Marguerite Bay, western Graham Land
HSM 65 Message post on Foyn Island, Possession Islands
HSM 66 Cairn at Scott Nunataks, Alexandra Mountains
HSM 67 Rock shelter ''Granite House'' at Cape Geology, Granite Harbour
HSM 68 Depot at Hells Gate Moraine, Inexpressible Island, Terra Nova Bay
HSM 69 Message post at Cape Crozier, Ross Island
HSM 70 Message post at Cape Wadworth, Coulman Island
HSM 71 Whaling station at Whalers Bay, Deception Island
HSM 72 Cairn on Tryne Islands, Vestfold Hills
HSM 73 Memorial Cross, Lewis Bay, Ross Island
HSM 74 Wreckage of sailing ship, Elephant Island, South Shetland Islands
HSM 75 ''A Hut'', Pram Point, Ross Island
HSM 76 Ruins of base ''Pedro Aguirre Cerda'', Pendulum Cove, Deception Island
HSM 77 Cape Denison, Commonwealth Bay, George V Land
HSM 78 Memorial Plaque at India Point, Humboldt Mountains, Wohlthat Massif, central Dronning Maud Land
HSM 79 Lilie Marleen Hut, Mt. Dockery, Everett Range, Northern Victoria Land
HSM 80 Amundsen's Tent

[FR Doc. 05–22545 Filed 11–10–05; 8:45 am]
BILLING CODE 7555–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 31

[FAC 2005–06; FAR Cases 2004–018 and 2004–006; Correction]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing amendments to the Federal Acquisition Regulation (FAR) to correct references included in FAC 2005–06, FAR cases 2004–018, Information Technology Security (Item I), and 2004–006, Accounting for Unallowable Costs (Item IX), which were published in the **Federal Register** at 70 FR 57449 and 57463, September 30, 2005.

DATES: Effective Date: November 14, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–06 Correction, Technical Amendments.

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: November 4, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-06 Correction is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-06 Correction are effective November 14, 2005.

Dated: November 4, 2005.

Domenic C. Cipicchio,

Acting Director, Defense Procurement and Acquisition Policy.

Dated: November 4, 2005.

Roger Waldron,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: November 1, 2005.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 31 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b) by removing the definition ''Sensitive But Unclassified (SBU) information''.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.201–6 [Amended]

■ 3. Amend section 31.201–6 by revising the introductory text of paragraph (c)(2) to read as follows:

31.201–6 Accounting for unallowable costs.

* * * * *

(c) * * *

(2) Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the following criteria in paragraphs (c)(2)(i),

(c)(2)(ii), and (c)(2)(iii) of this subsection are met:

* * * * *

[FR Doc. 05–22505 Filed 11–10–05; 8:45 am]

BILLING CODE 6820–EP–S

Proposed Rules

Federal Register
Vol. 70, No. 218
Monday, November 14, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 2004N–0556]

RIN 0910–AF21

Obstetrical and Gynecological Devices; Designation of Special Control for Condom and Condom With Spermicidal Lubricant

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the classification regulations for condoms and condoms with spermicidal lubricant containing nonoxynol–9 (condoms with spermicidal lubricant) to designate a special control for natural rubber latex (latex) condoms with and without spermicidal lubricant. FDA is proposing the draft guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex,'' as the special control that the agency believes will help provide a reasonable assurance of the safety and effectiveness of the devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing a notice of availability of the draft special controls guidance document for public comment.

DATES: Submit written or electronic comments on the proposed rule by February 13, 2006. See section IV.C of this document for the proposed effective and compliance dates of a final rule based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0556 and/RIN number 0910–AF21, 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. 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 additional information on submitting comments, 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, 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: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION: The preamble to this proposed rule provides an extensive scientific discussion addressing the medical accuracy of condom labeling, as required by Public Law 106–554. This discussion provides the basis for the labeling recommendations that FDA proposes, through this rulemaking, to designate as a special control for latex condoms. (FDA intends to address condoms made from other materials at a future date and solicits comments on possible special controls for such condoms in section VIII of this document.) After reviewing public comments, FDA intends to issue a final rule designating the guidance document as the special control for latex condoms with and without spermicidal lubricant.

I. Statutory and Regulatory Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), the Food and Drug Administration Modernization Act (Public Law 105–115), and the Medical Device User Fee and Modernization Act (Public Law 107–250), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, defined by the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as preamendments devices. FDA classifies these devices after the agency takes the following steps: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking

process. Those devices remain in class III until FDA does the following: (1) Reclassifies the device into class I or II; (2) issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act; or (3) issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a legally marketed device that has been classified into class I or class II. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and regulations at part 807 (21 CFR part 807).

Under the 1976 amendments, class II devices were defined as devices for which there was insufficient information to show that general controls themselves would provide reasonable assurance of safety and effectiveness, but for which there was sufficient information to establish performance standards to provide such assurance. SMDA broadened the definition of class II devices to mean those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

In addition to the act, as amended, and its implementing regulations, on December 21, 2000, Congress enacted Public Law 106–554, which required that FDA ''* * * reexamine existing condom labels'' and ''* * * determine whether the labels are medically accurate regarding the overall effectiveness or lack of effectiveness of condoms in preventing sexually transmitted diseases, including [human papillomavirus].'' Under this mandate, FDA undertook a review of the medical accuracy of condom labeling, which included an extensive review of the scientific information related to condoms. This review is discussed in the following paragraphs. The draft special controls guidance document includes labeling recommendations based on this FDA review.

II. Regulatory History of the Devices

A. Condoms

Condoms were marketed in the United States for both contraceptive and prophylactic (preventing transmission of sexually transmitted diseases (STDs)) use prior to the enactment of the 1976 amendments. As a preamendments device, the condom was classified along with hundreds of other devices during FDA's original classification proceedings. Based primarily on the clinical expertise and experience of experts on the Obstetrics and Gynecology Device Classification Panel, FDA classified condoms into class II by regulation published in the **Federal Register** of February 26, 1980 (45 FR 12710). Condoms were identified as ''* * * a sheath which completely covers the penis with a closely fitting membrane. The condom is used for contraceptive and for prophylactic purposes (preventing transmission of venereal disease) * * * '' (21 CFR 884.5300). This classification regulation includes latex condoms.

At the time that condoms were classified into class II, the statutory definition of that class contemplated the establishment of mandatory performance standards for all class II devices, in accordance with section 514(b) of the act (21 U.S.C. 360d(b)). Because of the complex process associated with issuing mandatory performance standards, the agency did not establish a performance standard for condoms or virtually any other class II device before SMDA provided additional options for special controls for class II devices in 1990. The present rulemaking proposes to designate a special control for latex condoms.

Condoms are also subject to general controls, which include good manufacturing practices (quality system regulation), registration and listing, adverse event reporting, and the prohibitions on adulteration and misbranding. This device is also subject to labeling requirements applicable to all devices, including a statement of principal intended action(s) and adequate directions for use, as described in part 801 (21 CFR part 801).

In addition to the general labeling requirements, latex condoms are subject to specific labeling requirements addressing expiration dating and latex sensitivity (§§ 801.435 and 801.437). FDA established expiration dating requirements in response to information that showed that the effectiveness of latex condoms as a barrier to sexually transmitted diseases, including human immunodeficiency virus (HIV), is dependent upon the integrity of the latex material. The expiration dating regulation addresses the risk of condom deterioration due to product aging and helps ensure that consumers have information regarding the safe use of latex condoms (62 FR 50501, September 26, 1997). The latex sensitivity labeling requirements were added in response to numerous reports of severe allergic reactions and deaths related to a wide range of medical devices containing natural rubber (62 FR 51021 at 51029, September 30, 1997).

B. Condoms With Spermicidal Lubricant

Condoms with spermicidal lubricant (containing nonoxynol–9) were classified by statute into class III because they were not in commercial distribution before May 28, 1976 (enactment of the 1976 amendments). In 1982, in response to a reclassification petition, the Center for Devices and Radiological Health (CDRH) reclassified condoms with the spermicide nonoxynol–9 (N–9) in the lubricant from class III to class II. The purpose of N–9 in the lubricant was to provide additional contraceptive protection in the event that semen were to leak or seep into the vagina. At the time of this reclassification, N–9 was already available as an over-the-counter vaginal drug product, used alone or with a cervical cap or diaphragm.

The petition for reclassification of condoms with N–9 in the lubricant contained evidence demonstrating that N–9 on the condom reduces sperm motility, a key factor in fertilization. Although the petition did not include clinical data to establish the degree of contraceptive protection provided by the N–9 in addition to that provided by the condom, FDA believed that the condom with spermicidal lubricant might provide an increase in use-effectiveness—the level of effectiveness attained by typical users, including those who either fail to use the product correctly or do not use it each time during sexual intercourse—and recognized that clinical studies of the device would be difficult to conduct and may not provide evidence justifying the effort of collecting it (47 FR 18670, April 30, 1982).

To address the limitation of the data, in the agency's reclassification order, FDA stipulated that the labeling for condoms with spermicidal lubricant bear the following contraceptive effectiveness provision:

> This product combines a latex condom and a spermicidal lubricant. The spermicide, nonoxynol–9, reduces the number of active sperm, thereby decreasing the risk of pregnancy if you lose your erection before withdrawal and some semen spill outside the

condom. However, the extent of decreased risk has not been established. This condom should not be used as a substitute for the combined use of a vaginal spermicide and a condom.

In the preamble to the final rule that codified the reclassification, FDA explained that condoms with spermicidal lubricant were reclassified into class II, provided that the labeling included the contraceptive effectiveness provision and an expiration date statement (47 FR 49021, October 29, 1982). To date, all legally marketed condoms with spermicidal lubricant have included the contraceptive effectiveness provision in the proposed labeling contained in the premarket notification (510(k)) submission that formed the basis for their clearance by CDRH. The condom with spermicidal lubricant is identified as ''a sheath which completely covers the penis with a closely fitting membrane with a lubricant that contains a spermicidal agent, N–9. This condom is used for contraceptive and prophylactic purposes (preventing transmission of venereal disease)'' (21 CFR 884.5310).

Condoms with spermicidal lubricant were reclassified into class II, mandatory performance standards. As discussed earlier in this document, however, because of the complex process associated with issuing mandatory performance standards, the agency did not establish a performance standard for condoms or virtually any other class II device before 1990, when the enactment of SMDA provided additional options for special controls. Consistent with current statutory authority, the present rulemaking proposes to designate a special control for latex condoms with spermicidal lubricant, as well as latex condoms without spermicidal lubricant. Condoms with spermicidal lubricant are also subject to general controls, including good manufacturing practices (quality system regulation), establishment registration and device listing, adverse event reporting, and the prohibitions on adulteration and misbranding.

This device is also subject to the labeling requirements applicable to all devices, including a statement of principal intended action(s) and adequate directions for use, as described in part 801. In addition to these general labeling requirements, latex condoms with spermicidal lubricant are also subject to the same labeling requirements addressing expiration dating and latex sensitivity as condoms without spermicidal lubricant (§§ 801.435 and 801.437).

III. Review of the Medical Accuracy of Condom Labeling

In re-examining condom labeling as directed by Public Law 106–554, and in the development of the draft special controls guidance document, FDA considered the following:

- Physical properties of condoms,
- Condom slippage and breakage during actual use,
- Plausibility for STD-risk reduction attributable to condoms,
- Evaluations of condom effectiveness against STDs by other Federal agencies, and
- Clinical data regarding condom protection against STDs.

Taken together, the information FDA considered and its analysis support the conclusion that condoms reduce the overall risk of STD transmission, although the degree of risk reduction for different types of STDs varies with their routes of transmission.

During the course of its reexamination of the medical accuracy of condom labeling, FDA also considered information on N–9 (section III.F of this document) and recent studies on contraception (section III.G of this document). The following sections summarize FDA's review.

A. Physical Properties of Condoms

Condoms are designed to work in accordance with a straightforward premise—condoms provide a physical barrier to sperm and to STD pathogens, and thus can reduce the likelihood of conception or STD transmission, which depend on the passage of those agents. (In the case of condoms containing N–9 in the lubricant, with respect to contraception, this physical barrier is supplemented by a spermicide.) To assess this premise, and in particular to determine what condom labels should communicate, FDA considered several sources of information about the physical properties of condoms.

1. Condom Barrier Property (Viral Penetration Assay)

To test the hypothesis that a condom inherently acts as a barrier to passage of very tiny particles, Lytle et al., conducted an in vitro study of nine different brands of latex condoms commercially available in the United States (470 samples), with and without spermicidal lubricant containing N–9. This study, later characterized as a viral penetration assay, used the bacteriophage ΦX174 as a surrogate for a pathogenic human virus (Ref. 1). This surrogate bacteriophage is only 27 nanometers (nm) in size, and is smaller than any pathogens that cause STDs. (By way of comparison, most bacteria are 1,000 nm or larger; HIV and herpes simplex virus (HSV) are on the order of 100 nm, and human papillomavirus (HPV) is about 53 nm. The test bacteriophage is also much smaller than sperm, which are 5–10 μm (cell body), i.e., 5,000–10,000 nm.) Of the 470 condoms tested, 12, or 2.6 percent, exhibited some viral penetration. Only two of the 470 condoms (0.43 percent) exhibited significant viral penetration.

This study showed that latex condoms are highly effective at preventing passage of even the smallest infectious agents. This supports the conclusion expressed later in this document that condoms are effective in reducing transmission of any STD to which they provide a mechanical barrier, namely, any STD that is spread to or from the penis, the area covered by the condom.

2. Presence/Absence of Holes (Water Leak Test)

Another physical property important to condom performance is the presence or absence of tiny pinholes that might occur in some condoms, even under optimal manufacturing conditions, but which are too small to see without magnification. As the viral penetration assay (Ref. 1) illustrated, passage of a virus or bacterium requires concomitant passage of the fluid medium in which the pathogens are suspended. Consequently, to operate as effective barriers, condoms should not have holes, even tiny holes, that might permit passage of fluid. The notion that condoms should not have holes is intuitive, and condom manufacturers have for years used tests for detection of tiny holes in the condom as a product release quality control measure, on a lot-by-lot basis. Likewise, FDA has pursued legal actions against manufacturers of condoms that have holes. See, e.g., *Dean Rubber Manufacturing Co.* v. *United States*, 356 F.2d 161 (8th Cir. 1966) (condoms labeled for prevention of venereal disease were adulterated where some had tiny pinholes, detectable through water leak test).

One way to test for the presence of tiny pinholes is by a standard water leak test that requires filling the condom with 300 milliliters (ml) of water and inspecting for leakage. Current consensus standards (American Society for Testing Materials (ASTM) D 3492 and International Standards Organization (ISO) 4074) address test methodology and acceptance criteria, and the agency has recognized both of these standards in accordance with section 514(c) of the act. (Interested parties can search for FDA-recognized

standards by accessing the following Web site: *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfstandards/search.cfm*.)

The agency believes that condom test methods and acceptance criteria regarding barrier properties specified in either of these two recognized standards are appropriate for use by manufacturers in the implementation of good manufacturing practices (GMPs) under the quality system regulations (21 CFR part 820) for their condom manufacturing operations. During inspections to monitor compliance with the quality system regulation, FDA confirms that condoms manufactured for the U.S. market are subject to appropriate acceptance testing to demonstrate compliance with their performance specifications, including testing to address the detection of pinholes. FDA also performs a check of all imported condom shipments, using the water leak test described previously in this document, to determine whether they meet an acceptable quality level.

3. Air Burst Properties

Besides being made of material that inherently serves as a barrier to sperm and microscopic STD pathogens, and being manufactured through processes that minimize the occurrence of tiny holes in finished product, other physical properties of a condom important to its effectiveness include air burst properties, such as burst pressure and burst volume. Such properties have previously been correlated with breakage during use (Ref. 2). In developing standards that specify minimum values that manufacturers use as specifications for their condoms, FDA and standards development organizations considered data from studies of air burst testing combined with data from manufacturers' experience with this test methodology. On April 5, 1994, FDA issued a letter to condom manufacturers requesting that they adopt ISO air burst testing as part of their finished device testing to provide increased assurance of protection from sexually transmitted diseases, including HIV. Following the issuance of this letter and FDA's recognition of the ISO, ASTM, and similar standards, manufacturers of latex condoms legally distributed in the United States have established and implemented air burst test requirements as part of their GMP procedures.

4. Packaging and Shelf Life

In collaboration with the Centers for Disease Control and Prevention (CDC) and state level health departments, FDA sponsored a large, multi-year shelf-life study testing the physical properties of marketed condoms over time under a variety of test conditions during the 1990s (Ref. 3). This study also highlighted the importance of quality packaging of the condom to prevent product deterioration. Using the results of this study, FDA issued a new labeling regulation in 1997 to address expiration dating for condoms made from natural rubber latex and the shelf life testing that must support it (§ 801.435). A similar provision is now contained in the international standard for latex condoms (ISO 4074).

B. Condom Slippage and Breakage During Actual Use

Because condoms must be in place and intact to form an effective barrier and thus help prevent pregnancy and provide protection against STD transmission, condoms should be designed to avoid slippage and breakage during actual use. As discussed later in this document, the National Institutes of Health (NIH) convened a workshop on condom effectiveness against STDs in June 2000 (the June 2000 Workshop). The June 2000 Workshop panelists looked at the question of condom slippage and breakage during use. The report from the June 2000 Workshop, based on the best available studies at the time, concluded that the condom breakage rate during use ranges from 0.4 percent to 2.3 percent, with a comparable rate for condom slippage (Ref. 4). Key factors affecting breakage include lack of experience, use of lubricant, and condom size. Since the June 2000 Workshop, we are aware of three additional, prospective studies that are consistent with these findings (Refs. 5, 6, and 7).

These data, when considered together with condom barrier properties and plausibility information (discussed in the following paragraphs), also support the conclusion that condoms reduce the risk of STD transmission, although, as discussed in the following section, the degree of risk reduction varies depending on the route of transmission of the STD. As discussed later in this document, this finding is also supported by review of studies on condom use and STD risk reduction.

C. Plausibility for STD Risk Reduction Attributable to Condoms

FDA evaluated the plausibility of attributing STD risk reduction to regular condom use by integrating the preceding information about the condom's barrier properties with information about general condom design (e.g., how the condom is donned and how it covers the penis) and about the clinical microbiology of STD pathogens and how they are transmitted. Specifically, STD transmission requires contact between a pathogen source from an infected individual (e.g., semen, mucus, or lesion) and a recipient site of an uninfected partner (e.g., vaginal or cervical mucosa of a woman, the urethra of a man, genital skin of either a man or a woman). For the reasons explained in the following paragraphs, the agency concludes that condoms can limit this contact, and that they thus reduce the overall risk of STD transmission.

In the evaluation to determine the overall effectiveness of condoms in preventing STD transmission, it is critical to recognize that individual STDs vary with respect to routes of transmission (e.g., via penile fluid or exposure to infectious skin) and infectivity (e.g., how many viral or bacterial particles must be transmitted for infection to occur). Based on these factors, FDA evaluated the extent to which a condom, which only covers the shaft and head of the penis, can provide an effective physical barrier to transmission of different STDs. To determine whether and to what extent it is reasonable, based on available information, to expect a condom to protect against different STDs, FDA considered nine STDs, including those most common in the United States, and their routes of sexual transmission. Table 1 of this document lists each STD considered and its usual route(s) of sexual transmission.

TABLE 1.—STDS AND USUAL ROUTE(S) OF TRANSMISSION

STD	Exposure to and From the Head of the Penis	Exposure to Infectious Skin or Mucosa (Excluding the Head of the Penis)
Group I		
HIV/Aquired Immunodeficiency Syndrome (AIDS)	✓	

TABLE 1.—STDS AND USUAL ROUTE(S) OF TRANSMISSION—Continued

STD	Exposure to and From the Head of the Penis	Exposure to Infectious Skin or Mucosa (Excluding the Head of the Penis)
Neisseria gonorrhea	✓	
Chlamydia trachomatis	✓	
Trichomoniasis	✓	
Hepatitis B Virus	✓	
Group II		
Syphilis	✓	✓
Genital HSV	✓	✓
Genital HPV	✓	✓
Chancroid	✓	✓

Regarding the potential for STD risk reduction attributable to condom use, FDA concluded that the potential for condoms to help prevent STDs that are transmitted from or to the penis (table 1, group I) is greater than the potential risk reduction for STDs that are also transmitted by contact with infectious skin or mucosa not covered by the condom (table 1, group II). This risk reduction is a result of the condom's ability to serve as a barrier to help prevent contact between the genital fluids and the potentially susceptible mucosa. For STDs transmitted from or to the penis, a condom will provide a physical barrier that helps to prevent STD pathogens contained in penile fluid from reaching the cervico-vaginal or ano-rectal mucosa, thereby reducing the risk of transmission from males with STDs that meet these conditions. It also protects a man's urethra from STD pathogens contained in his partner's secretions. STDs that meet these conditions include HIV, gonorrhea, chlamydia, trichomoniasis, Hepatitis B, and are listed in group I, in table 1 of this document.

For group II STDs, under its plausibility analysis, FDA concludes that while condoms are likely to provide some risk reduction, the degree of risk reduction may not be as great as that expected for group I STDs. This is because, for group II STDs, the condom provides a barrier in some, but not all, situations that may lead to transmission. Protection against group II STDs depends on the site of the sore/ulcer or infection. Condoms can only protect against transmission when the ulcers or infections are covered or when susceptible sites are protected by the condom.

In summary, considering the means of transmission of STDs and the extensive information on the physical characteristics and performance of condoms, FDA believes there is strong support for the conclusion that condoms are effective in reducing the overall risk of STD transmission. The extent of risk reduction varies between two general groups of STDs. Risk reduction is greater for those transmitted exclusively through contact with the penis. Risk reduction is not as great for those that may be transmitted both through such contact and through contact with infectious skin or mucosa not covered by the condom.

D. Evaluations of Condom Protection Against STDs by Other Federal Agencies

FDA also reviewed evaluations by other federal public health agencies regarding condoms and the protection they provide against sexually transmitted diseases.

1. The June 2000 Workshop: Scientific Evidence on Condom Effectiveness

In June 2000, the National Institutes of Health (NIH) convened a workshop with other federal public health agencies and outside expert panelists. The June 2000 Workshop entitled ''Scientific Evidence on Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention'' involved other federal agencies, including FDA, CDC, and the U.S. Agency for International Development. The report issuing from the June 2000 Workshop was based on consideration of approximately 138 papers, the majority of which were published before December 1999, mostly in peer-reviewed journals (*http://www.niaid.nih.gov/dmid/stds/condomreport.pdf*). (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) During its deliberations, the June 2000 Workshop panelists considered whether condoms can prevent infection by eight different STDs and came to the following conclusions:

HIV/AIDS: Workshop findings reaffirmed that condoms are highly effective against HIV transmission. From review of a meta-analysis of HIV discordant couples (Ref. 8), it was noted that correct and consistent condom use decreased the risk of HIV/AIDS transmission by approximately 85 percent. Panelists noted that many of the HIV/AIDS studies they reviewed employed better study methodologies than studies of other STDs. For example, HIV/AIDS studies were prospective, measured exposure for discordant couples (i.e., one partner is infected and the other is not infected), and were more likely to measure the effect of correct and consistent condom use. The primary outcome measure for these studies was typically condom effectiveness against transmission of HIV. Such study design features represent a relative strength of the HIV/AIDS condom literature compared with condom literature for other STDs.

Gonorrhea: Studies reviewed showed that correct and consistent condom use would reduce the risk of gonorrhea for men. However, the report stated that limitations in study methodology did not allow an assessment of the degree of protection in women.

Genital HPV: The report issuing from the Workshop concluded that most of the reviewed studies did not obtain sufficient information on condom use to allow careful evaluation of the association between condom use and HPV infection or disease. The report also concluded that there was no epidemiologic evidence that condom use reduced the risk of HPV infection, but that condom use might afford some protection in reducing the risk of HPV-associated diseases, including warts in men and cervical neoplasia (cervical cancer precursors and invasive cancer) in women.

Chlamydia, Syphilis, Genital HSV, Chancroid, and Trichomoniasis:[1] The

[1] Trichomoniasis was addressed by the June 2000 Workshop organized by NIH, the report of which is cited in Ref. 4, as well as in a CDC fact sheet discussed later in this document (*http://www.cdc.gov/nchstp/od/latex.htm*). (FDA has

report stated that the scientific literature did not allow an accurate assessment of the degree of potential protection offered against these STDs by correct and consistent condom use.

Although the panel acknowledged the available laboratory data on physical performance of condoms, as well as data from clinical studies on condom use patterns and condom slippage and breakage during use, neither these factors nor the plausibility of condom protection against the various STDs were considered in the summary conclusions on STD risk reduction described previously in this document, which reflected solely the assessment of clinical studies. As already explained, FDA's approach in the present rulemaking has considered all of these factors, in addition to the clinical data.

The June 2000 Workshop Summary also included an FDA analysis that looked at how different possible condom failure modes can affect the expected volume of semen exposure. Workshop panelists concluded that this analysis showed that, even in the event of condom breakage, leakage or slippage, condom use would still result in greatly reduced exposures because the amount of semen is reduced by orders of magnitude when compared to not using a condom at all.

2. CDC Fact Sheet ''Male Latex Condoms and Sexually Transmitted Diseases''

In December 2002, CDC developed a fact sheet for public health personnel entitled ''Male Latex Condoms and Sexually Transmitted Diseases,'' with information on condom protection against HIV/AIDS, gonorrhea, chlamydia, trichomoniasis, HSV, syphilis, chancroid, and HPV (*http://www.cdc.gov/nchstp/od/latex.htm*). (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) CDC's fact sheet addressed the same eight STDs considered by the June 2000 Workshop. The CDC Fact Sheet was based on laboratory studies, the theoretical basis for protection for condoms to reduce risk for STDs, and results of clinical studies. Based on review of these items, the fact sheet concluded:

> Latex condoms, when used consistently and correctly, are highly effective in preventing transmission of HIV, the virus that causes AIDS. In addition, correct and consistent use of latex condoms can reduce the risk of other sexually transmitted diseases (STDs), including discharge and genital ulcer diseases. While the effect of condoms in preventing human papillomavirus (HPV) infection is unknown, condom use has been associated with a lower rate of cervical cancer, an HPV-associated disease.

3. CDC Report to Congress entitled ''Prevention of Genital Human Papillomavirus Infection''

CDC included a systematic literature review of condoms and HPV and HPV-associated diseases in its January 2004 report to Congress entitled ''Prevention of Genital Human Papillomavirus Infection.'' This report describes the epidemiology of genital HPV infection and its transmission, and summarizes strategies to prevent infections with genital HPV and HPV-associated diseases. The report cited three studies (not included in the June 2000 Workshop report) that showed a statistically significant reduction in risk of HPV infection attributable to condoms, but noted that most studies did not show this effect (Refs. 31, 32, 33). The report stated that ''all published epidemiologic studies have significant methodologic limitations which make the effect of condoms in prevention of HPV infection unknown.'' The report continued:

> Given these observations, as well as the facts that laboratory studies show that latex condoms provide a barrier to HPV and that most genital HPV in men is located on areas of the skin covered by a condom, the cumulative body of available scientific evidence suggests that condoms may provide some protection in preventing transmission of HPV infections but that protection is partial at best. The available scientific evidence is not sufficient to recommend condoms as a primary prevention strategy for the prevention of genital HPV infection. There is evidence that the use of condoms may reduce the risk of cervical cancer.

The summary section of the report addressed strategies to prevent HPV infection and stated ''[w]hile available scientific evidence suggests that the effect of condoms in preventing HPV is unknown, condom use has been associated with lower rates of the HPV-associated diseases of genital warts and cervical cancer.'' The CDC report offered two possible explanations about how condoms might reduce the risk of genital warts and cervical cancer when the effect of condoms in preventing HPV infection is unknown. Condom use could reduce the quantity of HPV transmitted or the likelihood of re-exposure to HPV, thereby decreasing the risk of developing clinical disease. Another possible explanation offered by CDC is that condom use reduces the risk of exposure to a possible cofactor for cervical cancer, such as chlamydia or genital herpes, thereby reducing the risk of developing cervical cancer (Ref. 9). The summary section went on to state that ''[r]egular cervical cancer screening for all sexually active women and treatment of precancerous lesions remains the key strategy to prevent cervical cancer.''

E. Systematic Reviews Regarding Condom Protection Against STDs

The agency also analyzed the following sources of clinical data regarding condom protection against STDs:

- Systematic reviews (meaning reviews of a clearly formulated question that uses systematic and explicit methods to identify, select, and critically appraise relevant research and to collect and analyze data from studies that are included with the review) for STDs where such reviews were available; and
- Individual clinical studies for STDs where systematic reviews were not identified.

In the following analysis of clinical studies regarding condom protection against STDs, the STDs have been grouped according to plausibility for risk reduction attributable to condom use, discussed previously. The STDs transmitted primarily to or from the head of the penis (HIV, gonorrhea, chlamydia, and HBV) are discussed first (group I STDs). STDs that are also transmitted by exposure to infectious skin or mucosa excluding the head of the penis are discussed second (group II STDs). FDA believes this body of literature illustrates both the limitations and the benefits of condom use for protection against STDs.

1. Group I

HIV: In a recent meta-analysis (Ref. 10), Weller and Davis selected 14 clinical studies for final analysis based on exemplary study design. These prospective cohort studies of discordant heterosexual couples showed that correct and consistent use of condoms resulted in an overall 80 percent reduction in HIV incidence. Other reviews (Ref. 11) also have shown risk reduction against HIV associated with correct and consistent condom use. Consistent with the NIH Workshop findings, these reviews support the conclusion that correct and consistent

verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) FDA has similarly included this STD in table 1 as a group I STD on the basis of its route of transmission. This rulemaking does not consider any additional information regarding trichomoniasis, however, because there is no significant new information on this STD. Neither FDA's prior labeling recommendations nor its proposed special control guidance recommend making specific claims for condom effectiveness against trichomoniasis.

condom use is highly effective in reducing the transmission of HIV infection.

Gonorrhea: FDA is aware of one systematic review of the condom literature regarding protection against gonorrhea. This systematic review of 42 epidemiological studies reported in 2004 evaluated condom effectiveness for preventing gonorrhea, chlamydia, and pelvic inflammatory disease and found that in the vast majority of studies condom use was associated with a reduced risk of gonorrhea in women and men (Ref. 12).

Chlamydia: FDA is aware of one systematic review of the condom literature regarding protection against chlamydia (Ref. 12). The 2004 epidemiology review cited in the previous discussion of gonorrhea found that the vast majority of studies showed that correct and consistent condom use reduces the risk of chlamydia for both men and women.

This information also supports the conclusion that correct and consistent condom use can reduce the risk of chlamydia in both men and women.

Hepatitis B: FDA is not aware of any systematic reviews of the condom literature regarding protection against Hepatitis-B (HBV). Although data are limited, FDA identified one study that addressed this issue. This was a cross-sectional study (Ref.13), that showed that correct and consistent condom use was significantly associated with lower prevalence of HBV.

In summary, the previously discussed information shows that condoms, when used correctly and consistently, can be effective in reducing the risk of transmission of group I STDs, which are transmitted by exposure of the cervico-vaginal, urethral, or rectal mucosa to penile fluids or cervico-vaginal secretions.

2. Group II

Syphilis: FDA is not aware of any systematic reviews of the condom literature regarding protection against syphilis. However, FDA identified two prospective studies that have examined this question. A prospective cohort analysis of female ''sex workers'' in Bolivia (Ref. 14), showed that condom use was associated with a 61 percent reduction in the risk of syphilis. A secondary analysis of a prospective study (Ref. 15) also found a significant protective effect for condoms against syphilis transmission. Although data are limited, this information also supports the conclusion that correct and consistent condom use can reduce the risk of syphilis.

Genital Herpes: FDA is aware of one systematic review of the condom literature regarding protection against herpes. A literature review published in 2002 (Ref. 16) found that condom use appeared to reduce the risk of HSV-2 infection for women; an important study, cited in that review, was a prospective study among discordant couples that found condom use during more than 25 percent of sex acts was associated with protection against HSV-2 acquisition for women but not for men (Ref. 17). More recent prospective studies showed that condom use was associated with a reduced risk of HSV-2 for men and women (Refs. 18 and 19).

HPV: Genital HPV is a common infection in sexually active persons. Certain strains of genital HPV cause genital warts, while others are asymptomatic. The majority of genital HPV infections spontaneously regress and do not lead to clinical disease. Less commonly, genital HPV infection is persistent and leads to cellular abnormalities of the cervix that may progress to cervical cancer (Ref. 34).

FDA is aware of two systematic reviews of the scientific literature on HPV infection and condom use. The previously described 2004 CDC Report to Congress concluded that ''* * * the effect of condoms in preventing HPV infection is unknown, [but] condom use has been associated with lower rates of the HPV-associated diseases of genital warts and cervical cancer'' (Ref. 9). CDC concluded that the available scientific evidence is not sufficient to recommend condoms as a primary prevention strategy for the prevention of genital HPV infection, but that it does indicate that use of condoms may reduce the risk of cervical cancer. A separate review of 20 studies in 2002 found that, while condoms may not prevent HPV infection, they can reduce the risk of genital warts, cervical intraepithelial neoplasia II or III, and invasive cervical cancer (Ref. 20). This supports the conclusion that condoms can reduce the risk of genital warts, cervical intraepithelial neoplasia II or III, and invasive cervical cancer, which are caused by HPV.

Chancroid: FDA was unable to identify any systematic review articles on whether condom use reduces the risk of chancroid. Although data are limited, FDA is aware of one prospective cohort study (Ref. 21) of condom use for prevention of genital ulcer disease (presumed to be chancroid) that was conducted among prostitutes in Kenya. This study reported that condom use was associated with a significantly reduced risk of genital ulcer disease. It is important to note that the incidence of chancroid in the United States is extremely low.[2] In 1999, only 143 new cases were reported to the CDC (Ref. 22).

In summary, the previously discussed information suggests that condoms, when used correctly and consistently, can be effective in reducing the risk of transmission of group II STDs. The degree of risk reduction would be expected to be less than that for group I STDs.

F. Nonoxynol–9 (N–9)

Because N–9 kills HIV in vitro, some researchers in the early 1990s hypothesized that N–9 might help prevent or reduce the risk of HIV transmission in humans. This benefit, however, has not been demonstrated and was never included on the labeling of either drugs or devices, including condoms lubricated with N–9. Further, recent clinical data demonstrate that N–9 does not protect against HIV transmission, and frequent use can cause vaginal irritation, which may increase the risk of transmission of HIV from infected partners.

A study of ''sex workers'' in South Africa, Benin, Cote d'Ivoire, and Thailand who used a vaginal N–9 gel formulation reported higher HIV incidence than women who used a placebo formulation (without N–9) (Ref. 23). The study did not control for covariates such as condom use or anal sex, but 16 percent of women converted from HIV negative to HIV positive in the N–9 gel arm, compared to 12 percent of women who converted from HIV negative to HIV positive in the placebo group (p=.047). The study also showed that for the 32 percent of participants who reported use of a mean of more than 3.5 applications of vaginal gel per working day, the risk of HIV–1 infection in N–9 users was almost twice that in women who used the placebo gel. Researchers found that women who used N–9 had more vaginal lesions and vaginal lesions with epithelial breach, which might have facilitated the HIV transmission through the vaginal mucosa.

On June 25, 2002, the United Nation's World Health Organization (WHO) issued a report from a meeting it held in October 2001 to assess the available scientific information regarding the safety and effectiveness of N–9 when used for contraceptive purposes and to provide advice to Member States on the use of N–9. (Ref. 24). The WHO report concluded that there was no published

[2] Neither FDA's prior labeling recommendations nor the agency's proposed special control guidance recommend making specific claims for condom effectiveness against chancroid.

scientific evidence that N–9-lubricated condoms provide any additional protection against pregnancy or STDs compared with condoms lubricated with other products . In view of this finding and because adverse effects due to the addition of N–9 to condoms were possible, the WHO recommendation to the Member States was that condoms lubricated with N–9 should no longer be promoted for use in their condom distribution programs. However, the WHO report also concluded that ''* * * it is better to use N–9-lubricated condoms than no condoms.''

Prompted by this information, FDA conducted an exhaustive review of available literature on N–9 related to STD transmission for the purpose of evaluating over-the-counter (OTC) vaginal contraceptive drug products containing N–9. Based on this review, FDA concluded that N–9 does not protect against HIV/AIDS and other STDs. Furthermore, FDA identified potential new risks regarding HIV/AIDS associated with N–9 use. On January 16, 2003, FDA published a notice of proposed rulemaking that proposed to add warnings on the labeling for over-the-counter vaginal contraceptive drug products that contain N–9 (68 FR 2254, January 16, 2003) to address this information. FDA believes that, with the additional warnings, consumers can safely use these OTC drug products for their intended use as contraceptives. The preamble for this proposed drug labeling rule discusses in detail FDA's scientific review and conclusions regarding N–9 and STD transmission, which the agency likewise considered in its present evaluation.

The study of ''sex workers'' discussed previously in this document and others discussed in the preamble to the proposed labeling rule for vaginal contraceptive drugs containing N–9 were conducted using N–9 drug products, not latex condoms containing N–9 in the lubricant. FDA is aware of only one study specifically examining the effect on STD risk of N–9 in condom lubricant (Ref. 25). The study found no additional protective effect for gonorrhea and chlamydia. In addition, FDA believes the literature regarding N–9 vaginal contraceptive drug products establishes that N–9 does not protect against HIV/AIDS or other STDs, and also indicates that vaginal irritation can result from exposure to N–9, including in amounts similar to that found on N–9 lubricated condoms. That literature also indicates that such irritation presents a potential increased risk of HIV/AIDS transmission if a user is subsequently exposed to genital secretions from an infected partner.

In addition to the information regarding vaginal irritation and subsequent increased risk of HIV transmission associated with N–9 use, recent scientific studies also provide evidence indicating that N–9 damages rectal tissue and may increase transmission of infectious agents through the rectum. In animal studies comparing N–9 rectal lubricant against lubricant that is N–9 free, shortened time until infection occurred in animals pretreated with the N–9 product (Ref. 26).

Histologic abnormalities were more common on rectal biopsy following N–9 use compared to placebo lubricant (89 percent vs. 69 percent) (Ref. 27). In a different study, rectal lavage following application of N–9 gel showed sheets of exfoliated epithelium 15 minutes following product application. No sheets of cells were observed 15 minutes following application of the control product. Finally, no sheets of cells were noted 8 to 12 hours following application of either product (Ref. 28).

FDA is not aware of studies that have been conducted expressly to determine whether use of N–9 during anal intercourse increases the risk of HIV acquisition in humans. However, FDA believes that the evidence described previously in this document regarding the increased likelihood of HIV acquisition attributable to vaginal N–9 exposure, combined with the evidence of anal tissue disruption from N–9, suggests a similar risk in that context.

G. Contraception

As stated earlier in this document, condoms are also used to help prevent unintended pregnancy. The effectiveness of condoms as a contraceptive has been well established for years, as indicated in FDA's 1980 classification regulation and reaffirmed by recently published contraceptive studies on commercially available condoms (Refs. 5, 6, 29, and 30). These studies show that the typical use pregnancy rate after 6 month's reliance on condoms is 5.4 percent to 7.9 percent. These studies also show that correct and consistent use can significantly lower the failure (pregnancy) rate. Many of the same caveats that apply to use of a condom for STD risk reduction are equally important to condom use for preventing unintended pregnancy, e.g., correct and consistent use and factors that affect slippage and breakage (experience, lubrication, condom size). Attention to these factors is important to maximize condom protection.

IV. Proposed Rule

FDA reviewed the previously stated information as part of our reexamination of condom labeling directed by Public Law 106–554. In light of the agency's findings from our review, FDA is proposing to amend the classification regulations for condoms. The proposed regulatory changes, discussed in the following paragraphs, are intended to help ensure that condoms are used safely and effectively by providing labeling conveying a concise, accurate message that neither exaggerates the degree of overall protection provided by condoms, nor undervalues overall STD risk reduction provided by condom use.

A. Overview of Regulatory Changes

First, FDA is proposing to amend the identification sections of the classification regulations for condoms with and without spermicidal lubricant to change the wording ''venereal disease'' to ''sexually transmitted diseases,'' to reflect current medical terminology. These identification sections will continue to encompass condoms made of all materials, including natural membrane (skin) and synthetics, as well as latex. Second, FDA is proposing to add classification sections to each of the regulations, segregating the subset of condoms in each classification that are made of latex. Finally, FDA is proposing to designate a special controls guidance document with labeling recommendations for latex condoms.

As previously noted, latex condoms with and without spermicidal lubricant were classified into class II prior to the effective date of the SMDA provisions that broadened the definition of class II devices to establish special controls beyond mandatory performance standards. Developing a special controls guidance document as the means to provide reasonable assurance of the safety and effectiveness of condoms was not a regulatory option at the time of their original classification. Under the authority provided by SMDA, FDA is now able to propose the designation of a guidance document as a special control the agency believes will, together with the general controls, reasonably assure the safety and effectiveness of these devices. FDA has developed a draft special controls guidance entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex.'' This draft guidance document describes means by which latex condoms with and without spermicidal lubricant may comply with the requirement of special controls for

class II devices. The draft guidance document identifies the issues associated with these devices and recommends addressing these issues through labeling.

The current voluntary guidance recommendations for condom labeling do not address some of the important information FDA has identified in this proposed rule. In particular, current labeling does not provide specific information about the reduced protection condoms offer against transmission of certain STDs, such as HPV, that can be transmitted through contact with infected skin outside the area covered by the condom. In addition, current labeling does not provide specific information about the potential risks associated with the use of the spermicidal lubricant nonoxynol-9 (N–9) in condoms. FDA believes that providing consumers with this additional information on condom labeling can improve the safe and effective use of condoms. More accurate information about the risks and benefits of condom use with respect to STD transmission can lead to better choices by individuals who seek to protect themselves against these infections and potentially to reduced transfer of STDs.

The labeling recommendations in the draft guidance are intended to provide information to users of latex condoms with and without spermicidal lubricant. The draft special controls guidance recommends labeling to inform users about the extent of protection provided by condoms against unintended pregnancy and against various types of STDs, as well as information about possible risks associated with exposure to N–9 contained in the spermicidal lubricant of some condoms. The labeling recommendations provide important information for condom users to assist them in determining whether latex condoms are appropriate for their needs and, if so, to determine whether a condom with or without N–9 lubricant is most suitable. Many of the labeling recommendations are similar to statements in existing condom labeling, but are being updated to reflect current information. The labeling recommendations related to N–9 are more comprehensive than existing labeling.

FDA believes that this draft guidance is an appropriate special control to help provide reasonable assurance of the safety and effectiveness of latex condoms and latex condoms with spermicidal lubricant containing N–9. The following section discusses the issues requiring special controls and how FDA's proposed special control guidance document, announced elsewhere in this issue of the **Federal Register**, recommends addressing them.

B. Issues Requiring Special Controls

From its general knowledge of condoms and its specific review of the scientific evidence regarding the overall effectiveness of condoms in preventing STD transmission, FDA has identified several issues associated with the use of latex condoms that require special controls to provide reasonable assurance of safety and effectiveness. As addressed in more detail in the following paragraphs, the draft guidance document provides labeling recommendations that address the risks of unintended pregnancy and of STD transmission, the issue of incorrect and inconsistent use (which undermines the effectiveness of the condom in protecting against unintended pregnancy and STD transmission), and the risks and limited benefits presented by N–9, which is used in latex condoms with spermicidal lubricant.

1. Unintended Pregnancy

One of the principal intended uses of latex condoms is contraception. Although latex condoms can greatly reduce the risk of unintended pregnancy, they cannot eliminate this risk. In addition, as discussed elsewhere in this document, N–9, which is used in the lubricant of some condoms, kills sperm, but the degree of additional contraceptive protection that it adds to the condom has not been measured.

The draft special controls guidance document recommends that the labeling indicate that, when used correctly, latex condoms can greatly reduce, but do not eliminate, the likelihood of pregnancy. The draft guidance also recommends that the labeling include a comparative contraceptive effectiveness table with pregnancy rates for barrier contraceptives. This table is provided in the draft guidance and is intended to enable contraceptive users to compare alternatives and make appropriate choices.

The draft special controls guidance document also includes a recommendation that the labeling for latex condoms with N–9 state that the pregnancy protection that N–9 provides has not been measured. If the proposed rule designating a special control and the accompanying guidance become final, the new statement will supersede the provision originally included in the order reclassifying latex condoms with N–9 from class III to class II (47 FR 49201).

2. Transmission of STDs

The other principal intended use of latex condoms is protection against the transmission of STDs. In developing the special control, FDA examined the plausibility of STD risk reduction and other scientific evidence, explained previously in section III of this document. This body of evidence indicates that as an overall matter, latex condoms are effective at reducing the risk of STD transmission, but that differences exist in the level of risk reduction provided by latex condoms with respect to two general groups of STDs, distinguished by their means of transmission.

Consistent with FDA's findings in the scientific review described previously in this document, the draft special controls guidance provides specific labeling recommendations addressing the risks of STD transmission by explaining the effectiveness of latex condoms with regard to this use. The draft guidance recommends that the labeling explain that latex condoms can greatly reduce, but not eliminate, the risk of acquiring or transmitting (catching or spreading) HIV. The guidance also recommends labeling to inform users that STDs can be transmitted in various ways, including transmission to or from the penis and transmission by other types of sexual contact. The guidance recommends labeling to explain that latex condoms can reduce the risk of STDs that are spread to or from the penis by direct contact with the vagina and genital fluids, such as gonorrhea and chlamydia.

It further recommends labeling that indicates that some STDs, such as genital herpes and HPV, may also be transmitted by contact with infectious skin or mucosa not covered by the condom, and that condoms provide less protection against these STDs. Labeling should clarify that, even for these STDs, however, there may be some benefits from correct and consistent use, such as a lower risk of catching or spreading herpes infection and a lower risk of developing some HPV-related diseases, such as genital warts and cervical cancer.

The guidance for condom labeling does not recommend including information about other ways to prevent the transmission of STDs or to reduce the adverse clinical outcomes associated with these infections. There is important additional public health information about strategies to prevent transmission of HPV and to reduce serious clinical outcomes. These strategies include abstinence for men

and women and regular cervical screening for women. However, the agency believes its primary role in this area is its jurisdiction over labeling for latex condoms and that its main goal must be to ensure that such labeling supports the safe and effective use of latex condoms by users who have chosen latex condoms for protection. At this time, the agency has concluded that it would not be useful to include in condom labeling additional educational information about social behaviors or public health programs that can reduce the risk and consequences of STD transmission. Additional information in condom labeling may confuse condom purchasers or cause them to overlook important messages. However, providing this information through other mechanisms not under FDA's jurisdiction may be beneficial.

FDA believes the message it has crafted in its labeling recommendations is a balanced recognition of the benefits and limits of condoms for reducing STDs. The guidance does recommend that condom users consult health care professionals or seek additional information about STDs from reputable governmental agencies. FDA's recommended labeling is also likely to be a springboard for new initiatives to inform and educate public health officials, health educators, and—in the end—potential condom users. FDA fully expects to partner with Federal, State, and local public health officials to help develop such informational and educational materials.

Later in this proposal, FDA is specifically requesting comments from the public about the value of adding additional information to condom labeling about other ways to prevent the spread of HPV and the clinical outcomes that may develop from that infection.

3. Incorrect or Inconsistent Use

In order for latex condoms to achieve a protective effect against the risks identified above, they must be used correctly and consistently. Incorrect use can undermine the effectiveness of the condom against the likelihood of unintended pregnancy and risks of STD transmission. Inconsistent use, for example, not using a condom with every act of intercourse, can also diminish the effectiveness of the condom against the risks of unintended pregnancy and STD transmission.

The draft special controls guidance document recommends that the labeling include appropriate precautions to help reduce the incorrect and inconsistent use of latex condoms. The draft guidance recommends specific precautions on using, storing, and lubricating latex condoms.

4. Issues Associated With N–9 in Condoms With Spermicidal Lubricant

As discussed previously in this document, since 1982, condoms with N–9 in the lubricant have been required to bear a statement addressing the contraceptive effectiveness of N–9 in order to be classified under § 884.5310. No claims relating N–9 to the effectiveness of condoms in preventing STD transmission have been permitted on condom labeling. Subsequently, new information has been developed that demonstrates that there are risks associated with N–9 that may outweigh its benefits as a spermicidal lubricant for certain users and that confirms that N–9 provides no benefit for STD prevention.

Specifically, as explained in the previous sections, based on its review of the available scientific evidence, FDA concludes that N–9 kills sperm; however, the additional pregnancy protection provided by N–9 has not been measured. This limited contraceptive benefit clearly does not apply when a condom is used for anal sex. Furthermore, N–9 on the condom does not protect against HIV/AIDS or other STDs. FDA also concludes that N–9 can irritate the vagina, which may increase the risk of HIV/AIDS transmission from an infected partner. Additionally, clinical data demonstrate that N–9 can irritate the cells lining the rectum, a finding that, in combination with other information about the transmissibility of HIV, indicates that N–9 may increase the risk of HIV transmission from an infected partner when used for anal sex. Given these factors, for some users, risks associated with N–9 may outweigh the benefits of using a condom containing N–9 in the spermicidal lubricant. The recommended labeling in the draft special controls guidance instructs such users to choose a latex condom without N–9.

From discussions with condom manufacturers, FDA's understanding is that a large proportion of couples using condoms with N–9 are using them primarily for contraceptive protection and are at low risk for HIV/AIDS infection. To provide reasonable assurance of safe and effective use, however, users need to know about the increased risk of HIV acquisition from an infected partner that might be associated with exposure to N–9, including exposure resulting from use of condoms containing N–9 in the lubricant, as well as understand the scope of benefits provided by latex condoms lubricated with N–9. Through the proposed designation of the special controls guidance document, FDA seeks to provide decisionmaking information and cautions that should permit users to determine whether a latex condom with spermicidal lubricant is appropriate for their needs.

Specifically, FDA's draft special controls guidance document recommends that the labeling for latex condoms with spermicidal lubricant state that the product contains the spermicide N–9, which kills sperm, but that the pregnancy protection provided by N–9 has not been measured. The draft guidance also recommends that the labeling state that the N–9 lubricant on the condom does not protect against HIV/AIDS or other STDs. Including this information permits potential users of condoms with N–9 to evaluate the benefits that this particular type of condom may offer, particularly in relation to other latex condoms. As discussed in FDA's proposed rule on OTC vaginal contraceptive drug products containing N–9, information currently available to the general public creates the misperception that N–9 might help decrease the risk of becoming infected with HIV and other STDs (68 FR 2254). Addressing the lack of STD protection provided by N–9 is therefore necessary to help assure safe and effective use of condoms with N–9 because the public may mistakenly believe that N–9 does provide this benefit.

In addition, the draft special controls guidance document recommends that condom labeling inform users that use of N–9 can irritate the vagina and that this may increase the risk of getting HIV/AIDS from an infected partner. Labeling should also inform users that if they or their partner have HIV/AIDS, or if their infection status is unknown, they should choose a latex condom without N–9. In addition, given that use of N–9, which is intended solely for contraceptive effect, offers no benefit for anal intercourse, and that rectal use of N–9 may increase the risk of HIV/AIDS transmission, the proposed labeling warns that N–9 can irritate the rectum and that condoms with N–9 should not be used for anal sex.

FDA believes that the designation of this special control, which addresses the information developed since the 1982 reclassification of condoms with spermicidal lubricant into class II, together with general controls, should reasonably assure the safety and effectiveness of these devices. Crafting labeling for these devices does present unique difficulties, however. Unlike OTC vaginal contraceptive drugs

containing N–9, latex condoms (both with and without N–9) are intended for STD prevention as well as contraception. While the N–9 lubricant provided on some condoms is intended to support only the contraceptive use of the condom, this N–9 lubricant component may also unintentionally increase the risk of transmission of HIV if a person were exposed to an infected partner's secretions after first being exposed to the N–9 lubricant on the condom. For example, this increased risk scenario could occur if a person had sex using a condom with N–9 and then subsequently had sex with an infected partner who did not use any condom. At the same time, for reasons explained in the prior sections, latex condoms with N–9 are effective barrier devices, and it is this barrier effectiveness that is the source of their protection against HIV/AIDS and other STDs.

For these reasons, the proposed labeling in the draft special controls guidance document indicates that latex condoms (both with and without spermicidal lubricant containing N–9), when used correctly every time you have sex, greatly reduce, but do not eliminate, the risk of catching or spreading HIV, while also indicating that persons who may be at risk of HIV exposure should choose latex condoms without N–9. We welcome comments on this labeling and on any means of improving it to minimize confusion. In addition, in section VIII of this document, FDA specifically requests comments on whether this special control is sufficient to provide a reasonable assurance of the safety and effectiveness of latex condoms with spermicidal lubricant containing N–9, or whether there are other special controls that FDA should consider. FDA also requests comments on whether special controls alone are sufficient to provide a reasonable assurance of the safety and effectiveness of latex condoms with spermicidal lubricant containing N–9 or whether the risks of N–9 outweigh the potential contraceptive benefits the spermicide adds to the barrier protection of condoms.

At this time, FDA is not proposing to designate a special control for any condoms made of natural membrane (skin) or synthetic materials. Discussions with the condom industry indicate that condoms made from natural rubber latex represent nearly 98 percent of the U.S. retail market for condoms. The agency understands that all condoms distributed by public health and other organizations are also made from natural rubber latex, based on the agency's discussions with manufacturers. The agency believes, therefore, that the recommendations in the draft special controls guidance document address the vast majority of condoms distributed in the United States. However, at a future date, FDA also intends to address condoms made from other materials that are not specifically addressed by this guidance. Until FDA provides further specific guidance for these products, manufacturers of synthetic condoms may consult Part C of FDA's guidance document entitled ''Testing Guidance for Male Condoms Made From New Material (June 25, 1995),'' available at: *http://www.fda.gov/cdrh/ode/oderp455.html*, and manufacturers of natural membrane condoms may consult the guidance document entitled ''Guidance for Industry-Uniform Contraceptive Labeling (July 23, 1998),'' available at: *http://www.fda.gov/cdrh/ode/contrlab.html*.

FDA believes, however, that most of the recommendations contained in the draft special controls guidance document for latex condoms regarding labeling to address N–9 are also applicable to nonlatex condoms containing N–9, and encourages manufacturers to follow those aspects, as noted in the draft guidance itself. We also specifically solicit comment in section VIII of this document on whether the recommendations in the proposed draft guidance that address issues related to N–9 should be proposed as a special control for all condoms with spermicidal lubricant, regardless of material.

C. Implementation and Proposed Effective and Compliance Dates

After reviewing public comments on this proposed rule and draft guidance document, FDA intends to finalize the guidance document and to issue a final rule for condoms with and without spermicidal lubricant, which will make that guidance document effective as the special control for latex condoms with and without spermicidal lubricant. FDA proposes to implement any such final rule as follows. We propose that any final rule based on this proposal become effective 30 days after the date of its publication in the **Federal Register**. We propose that latex condoms cleared for marketing on or after this effective date (but submitted in 510(k)s filed before the effective date) comply with the requirement of special controls by following the recommendations in the special control or providing equivalent assurances of safety and effectiveness no more than 60 days after the effective date of any final rule based on this proposal. Premarket notification submissions (510(k)s) for new latex condoms with or without spermicidal lubricant, filed after the effective date of any final rule based on this proposal, must address the issues covered in the special controls guidance document when the 510(k) is submitted. However, the firm submitting a 510(k) needs only to show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

FDA proposes that latex condoms legally marketed before the effective date of any final rule resulting from this proposal comply with the requirement of special controls by following the recommendations in the special controls guidance document or in some other way providing equivalent assurances of safety and effectiveness within 12 months after the date of publication of the final rule based on this proposal in the **Federal Register** (11 months after the effective date of the final rule based on this proposal). If the issues requiring special controls are addressed by labeling as recommended in the special controls guidance document, no new premarket notification (510(k)) or other report need be filed to address the changes made. (However, if a manufacturer chooses to satisfy the requirement of special controls by making other changes to the device that trigger the submission of a new 510(k) in accordance with § 807.81(a)(3), a new submission will be required.)

This dual compliance date proposal is intended to allow depletion of stocks of condoms with existing labeling, as well as production of condoms with new labeling. Based on discussion with major manufacturers, we believe that the majority of latex condoms reach final users well within 12 months of leaving manufacturer control. We welcome comment on our estimate and on the proposed implementation strategy in general.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and

benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the principles identified in Executive Order 12866. The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action as defined by the Executive order and so is subject to OMB review.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA does not believe that the proposed rule will have a significant economic impact on a substantial number of small entities, but recognizes the uncertainty of its estimates. Because the agency acknowledges that many affected entities are small entities, the analysis presented below, along with this preamble, constitutes the agency's Initial Regulatory Flexibility Analysis, and the agency specifically solicits comments on its estimates and analysis of the impact of the rule on those small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Background

The purpose of this proposed rule is to amend the classification regulations for condoms and condoms with spermicidal lubricant to designate a labeling guidance as a special control for latex condoms within either classification. (FDA intends to address condoms made from other materials at a future date.) As discussed earlier in this preamble, condoms and condoms with spermicidal lubricant have been previously classified into class II in accordance with section 513 of the act. The draft special controls guidance identifies particular issues associated with these devices and recommends labeling to address those issues. The current voluntary guidance recommendations for condom labeling do not address some of the important risk information FDA has identified in this proposed rule. In particular, current labeling does not provide specific information about the reduced protection condoms offer against transmission of certain STDs, such as HPV, that can be transmitted through contact with infected skin outside the area covered by the condom. In addition, current labeling does not provide specific information about the potential risks associated with the use of the spermicidal lubricant nonoxynol-9 (N–9) in condoms. FDA believes that providing consumers with this additional information on condom labeling can improve the safe and effective use of condoms. More accurate information about the risks and benefits of condom use with respect to STD transmission can lead to better choices by individuals who seek to protect themselves against these infections and potentially to reduced transfer of STDs.

Other options the agency considered. One option the agency considered was to publish its conclusions as a regular guidance document, rather than as a special controls guidance document. This approach would have made the information available to the public through agency publication, but it would not have required that manufacturers address the labeling issues FDA has identified. Unlike a regular guidance, which imposes no requirements, a special controls guidance requires that manufacturers address the issues identified in the guidance, either by following the recommendations in the guidance or by some other means that provides equivalent assurances of safety and effectiveness. Although FDA believes that many manufacturers would incorporate significant portions of the new recommendations voluntarily, as they have in the past with respect to other recommendations for condom labeling, FDA concluded that a purely voluntary approach did not ensure sufficient compliance or consistency to adequately convey this important information to the public.

The agency also considered rulemaking that would mandate specific new language on all condom labeling to address the concerns FDA has identified. The agency rejected this option because a labeling rule deprives manufacturers of any flexibility with respect to the way they provide the information to consumers and because a labeling rule is difficult to change or amend as new scientific information becomes available to update the public health message.

The benefit of the option the agency has chosen is that establishing the labeling guidance as a special control means that manufacturers will be required to address the concerns identified in the guidance, although they will not be bound to use the particular language FDA is recommending. Since the passage of the Safe Medical Devices Act of 1990, FDA has been permitted to establish ''special controls'' as a way to ensure that a manufacturer of a Class II device will be able to establish the safety and effectiveness of that device. In addition to all the general controls that apply to all classes of devices (such as adverse event reporting and good manufacturing practices), a ''special control'' provides an additional and necessary level of assurance that the risks associated with a Class II device can be addressed by the manufacturer.

Special control guidances have become one of the most important ways that FDA ensures the safety and effectiveness of Class II medical devices. While a special control guidance remains a ''guidance'' because there is no requirement to comply with the specific recommendations the guidance sets forth, the special control guidance places an obligation upon the manufacturer to address the issues and concerns identified in that guidance. As a practical matter, most manufacturers do follow the recommendations in a special controls guidance because it is frequently the least burdensome way for that manufacturer to make sure that his Class II product will meet the necessary standards of safety and effectiveness. However, the manufacturer can address the issues identified in the guidance by following the recommendations in the guidance or by some other means that provides equivalent assurances of safety and effectiveness. In this way, issuing a special controls labeling guidance for condoms ensures that manufacturers will provide consumers with the information they need to make an informed decision regarding the use of condoms. The special control guidance helps ensure that information provided to consumers does not exaggerate the degree of overall protection provided by condoms, nor undervalues the overall STD risk reduction provided by condom use. The agency believes this special control will, together with the general controls, provide reasonable assurance of the safety and effectiveness of those devices.

B. Affected Entities and Scope of Effect

The proposed rule would affect the persons responsible for the labeling of latex condoms, which, in most cases, would be manufacturers of the vast majority of condoms, including repackagers. If a final rule is issued, manufacturers of condoms, including repackagers, will need to address the issues identified in the special controls guidance document. The firm need only show that its device meets the recommendations of the guidance document or in some other way provides equivalent assurances of safety and effectiveness. To meet the recommendations of the special controls guidance document, wording on the retail package, including the principal display panel, the primary condom package (individual foil), and package insert would most likely need changes to conform to the guidance document.

Agency records show that approximately 35 entities that manufacture or repackage latex condoms would be affected by this proposed rule. FDA does not track the number of different product and package combinations or stockkeeping units (SKUs) on the market. Based on data we received from industry, we estimate that currently there are between 500 and 1,000 SKUs on the market that would need labeling changes. If the products are sold with a retail package, the wording on each of these SKUs would need to be changed. Because manufacturers can often use the same individual foil and package inserts across their product lines, the number of versions of this labeling that would require changes would be less than the number of SKUs.

Based on the agency's experience with the industry and anecdotal information from manufacturer and retail Web sites, we estimate that there would be a total of 802 to 1,605 labeling changes to retail packages, individual foils, and package inserts. We assumed that 95 percent of the SKUs (475 to 950) are marketed with 3 levels of labeling (a retail package, individual foil, and package insert), and the remaining 5 percent have 2 levels (a foil and package insert). For the SKUs with three levels of labeling, we further assumed that for every three retail package redesigns there would be one foil label redesign, and for every four retail package redesigns, there would be one package insert redesign. We based these assumptions on our knowledge that a single condom type is often sold in several retail packages containing different numbers of condoms, in which case retail packages would be different for each SKU but package inserts and foil labels would be shared by multiple SKUs. The distribution of the different labeling that would need to be redesigned is listed in table 2 of this document and includes 475 to 950 retail packages, 183 to 367 foils, and 144 to 288 inserts. (Sample calculation: (500 x 0.95 / 3) + (500 x 0.05) foils and (500 x 0.95 / 4) + (500 x 0.05) inserts.)

C. Costs of Implementation

Frequent package changes or redesigns are standard business practice in the consumer healthcare products market. Manufacturers with products intended for retail sales will have established routines for product relabeling and employees with the technical expertise to implement labeling changes. The cost to relabel a product can be broken into three basic components: regulatory, graphics, and manufacturing. The regulatory component includes determining what changes are necessary, drafting the wording for the new labeling, and coordinating the review and revisions. The graphics component includes preparing the layouts, proofs, and printing. Finally, the manufacturing component includes incorporating the new labeling into the manufacturing system, discarding old labeling inventory, and making any changes to the packaging line to accommodate the new labeling, if necessary.

The proposed rule designates a special controls guidance document that recommends changes to wording and some additional text. Many of the labeling recommendations are similar to statements in existing condom labeling, but are being updated to reflect current information. The labeling recommendations related to N–9 are more comprehensive than existing labeling. In general, these changes should not require major changes in the design or layout of existing labeling and we believe that, in most cases, the changes could be incorporated without having to increase the dimensions of any of the labeling.

The itemized cost estimates used in this analysis were derived from a study performed for FDA by Eastern Research Group, Inc. (ERG), an economic consulting firm, to estimate the economic impact of the 1999 Over-the-Counter Human Drug Labeling Requirements final rule (64 FR 13254, March 17, 1999).[3] Because the packaging requirements for condoms are similar to those of many OTC drugs, we believe the cost to redesign and print the labeling for OTC drugs is an appropriate proxy for the estimated costs to redesign and print condom labeling. For this analysis, cost estimates were adjusted to account for inflation using the producer price index (PPI) for finished consumer goods, and current wage rates specific to the medical device industry were substituted for the wages used by ERG in the original OTC drug labeling impact study.[4] We request specific comment on the values and methodology used to estimate the costs in the following paragraphs.

We estimate that the regulatory component of each labeling redesign would require between 8 to 16 hours per SKU. Using a wage rate of $43.69,[5] the incremental cost of the one-time regulatory component cost to redesign would be $350 to $700 per labeling redesign (8 (to 16) hours x $43.69/hour). The one-time cost of the graphic component was estimated to be $550 per labeling redesign.[6] The one-time cost of the manufacturing component, which included the incorporation of the new labeling into the manufacturing system and discarding the remaining inventory of the old labeling, was estimated to require between 3 and 5 hours per label. Using the wage rate of $19.25 for a production employee,[7] this cost would range from about $58 to $96 per label (3 (to 5) hours x 19.25/hour).

[3] Eastern Research Group, Inc., Cost Impacts of the Over-the-Counter Pharmaceutical Labeling Rule (March 1999). Contract number 223–94–8031, Docket No. 96N–0420, OTC Volume 28 FR, Division of Dockets Management.

[4] The ERG cost estimates were based on estimates made in 1998. The annual PPI for finished consumer goods rose by 9.6 percent between 1998 and 2003 (from 130.7 to 143.3) *http://www.cdc.gov/nchstp/dstd/Stats_trends/trends2000.pdf*, extracted July 7, 2004. Wage estimates are from the Bureau of Labor Statistics, May 2003 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 339100—Medical Equipment and Supplies Manufacturing, (*http://stats.bls.gov/oes/2003/may/naics4_339100.htm*), extracted July 7, 2004. (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

[5] Mean hourly wage for a compliance officer, SOC 13–1041, in NAICS 339100 is $31.21, which was increased by 40 percent to account for employee benefits and equals $43.69 (*http://stats.bls.gov/oes/2003/may/naics4_339100.htm*). (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

[6] ERG estimated the cost at $500 per redesign. Adjusting for inflation, the cost would be $548 ($500 x 1.096) and was rounded to $550. (See footnotes 3 and 4.)

[7] Mean hourly wage for the average production worker is $13.75, SOC 51–0000, in NAICS 339100, which was increased by 40 percent to account for employee benefits and equals $19.25, (*http://stats.bls.gov/oes/2003/may/naics4_339100.htm*). (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

The value of the old labeling inventory would vary greatly depending on the type and complexity of the labeling, the average sales per SKU, and the length of the implementation period granted. Based on the ERG study, with a 12-month implementation period we estimate that the one-time inventory loss would range from $410 to $1,650 per foil or package insert and from $1,250 to $4,950 per carton.[8]

FDA believes that by providing a 12-month implementation period, manufacturers would have enough time to sell their existing product inventory and have enough newly labeled inventory on hand to meet demand without a disruption in supply. The total estimated incremental one-time costs to the industry for each component of a labeling redesign was calculated by multiplying the cost per label by the number of labels affected and are presented in table 3 of this document. Because of the uncertainty of the estimates, only the lowest and highest estimated costs are presented rather than reporting the intermediate values that would be obtained using other pairings of high with low values in the ranges estimated. The total one-time incremental cost to the industry was estimated to be between $1.5 and $7.9 million.

The cost to individual firms to comply with this proposed rule would vary greatly depending on the number of products they produced, how the products were packaged, and the sales volume. As stated earlier in this document, frequent labeling changes are a cost of doing business in the consumer healthcare products market and firms would have the skills necessary to comply with this proposed rule. Because the steps followed for a firm-initiated change are the same as for regulatory change, the labeling recommendations could be incorporated at the time a firm is implementing a firm-initiated labeling change for little additional cost, and thus, if this rule became final, the economic impact of this proposed rule would be mitigated by the number of firm-initiated labeling changes made during the implementation period. In addition, because most labeling equipment can handle different labeling sizes and types and because there are a large number of companies available that can provide contract labeling services, we do not believe that any manufacturer would incur major costs such as the need to purchase new labeling or packaging equipment as a result of this rule.

There are about 12 domestic entities that manufacture or repackage condoms. The Small Business Administration (SBA) has established criteria to identify small entities in given industries using the North American Industry Classification System Code (NAICS). The NAICS for manufacturing latex condoms is 326299 (All Other Rubber Product Manufacturing). Firms in this industry are considered small if they have fewer than 500 employees. Ten of the 12 domestic entities affected by this proposed rule are small as defined by SBA.

The size of a firm alone, however, would not be a determinant factor on the economic impact of this proposed rule. The relative impact per SKU would be less for products with a high volume of sales because the one-time costs are spread over a larger number of units. The cost of actual replacement labeling should also be lower for products with high volume sales. Our experience with the device industry in general, as well as with the latex condom industry in particular, indicates that a small-sized company is just as likely as a large-sized one to have products with high sales volume and to have the same or a greater number of SKUs.

The agency considered three alternatives before choosing to issue this proposed rule. They included the options of issuing a guidance that would not be designated as a special control, issuing a labeling regulation mandating exact wording, and the option chosen, issuing a proposed rule that designates a special controls guidance document with labeling recommendations. We rejected the issuance of a guidance document alone because it would not provide enough assurance that consumers would receive the information regarding the issues of latex condoms with or without N–9 and thus would not provide sufficient assurance of safety and effectiveness. We rejected the option of a labeling rule with specified wording because it would not provide manufacturers with any flexibility in addressing these issues today and would not, in the future, permit flexibility in addressing new scientific information relevant to these issues.

We chose to issue a proposed rule that designates a special controls guidance document because it requires that the device either meet the recommendations or in some other way provide equivalent measures of safety and effectiveness. This approach protects the public health by ensuring that manufacturers address the issues related to latex condoms with or without N–9, while, at the same time, it affords manufacturers some flexibility in implementing the mitigation measures outlined in the special controls labeling guidance document.

We also considered different implementation periods before proposing a 12-month implementation period. The agency believes that consumers should have the most up-to-date information and that this labeling will lead to better understanding of the health risks and benefits of the product. We believe that allowing for a longer implementation period unnecessarily postpones consumer's access to the information. However, an implementation period shorter than 12 months would increase the costs imposed by the rule, and it would be difficult for those manufacturers producing many SKUs to accomplish the task within a shorter time frame because of the large number of label designs that would need to be changed. We have learned through industry and trade association comments submitted in response to proposed OTC drug rules that the OTC drug industry can accommodate a 12-month implementation period without undue economic hardship and believe that the condom industry can accommodate a similar implementation period without undue economic effects on the industry or harmful effects on the costs or supply of condoms.

As discussed earlier in this document, while we believe the cost to revise latex condom labeling is small, we lack sufficient specific information on the costs and characterization of the industry to certify that this rule would not have a significant economic impact on a substantial number of small entities. Thus, while FDA does not believe that this proposal will have a significant effect on a substantial number of small entities, we recognize the uncertainty of our estimates. We request specific comments regarding the assumptions and methodology used in this analysis. FDA intends to consider all comments and data received and will reassess the economic impact of this proposed rule in the preamble to the final rule.

[8] ERG estimated that when there was no implementation period granted, the average inventory loss for OTC drug container labels ranged from $1,500 to $6,000 for small to medium sized OTC drug firms. With a 12-month implementation period that loss decreased by 3/4. The value of carton inventory was estimated to be about 3 times greater than container labels. Allowing for inflation (see footnote 4) the 0-month estimates are approximately $1,650 and $6,575, respectively (e.g., $1,500 x 1.096).

TABLE 2.—ESTIMATED NUMBER OF LABEL DESIGNS THAT MAY NEED TO BE MODIFIED

Component	Low-End Estimate	High-End Estimate
Cartons	475	950

TABLE 2.—ESTIMATED NUMBER OF LABEL DESIGNS THAT MAY NEED TO BE MODIFIED—Continued

Component	Low-End Estimate	High-End Estimate
Foils	183	367

TABLE 2.—ESTIMATED NUMBER OF LABEL DESIGNS THAT MAY NEED TO BE MODIFIED—Continued

Component	Low-End Estimate	High-End Estimate
Inserts	144	288
Total	802	1,605

TABLE 3.—ESTIMATED RANGE OF COMPLIANCE COSTS BY FUNCTION

Component	Range	Hours	Wage/hour	Cost/label	Number of labels	Total	
						Low	High
Regulatory	low	8	$43.69		802	$280,315	
	high	16			1,605		$1,121,952
Graphic	low			$550	802	441,100	
	high				1,605		882,750
Manufacturing	low	3	$19.25		802	46,317	
	high	5			1,605		154,480
Inventory	foil and insert						
	low			$410	327	134,070	
	high		$1,650	655		1,080,750	
	carton						
	low			$1,250	475	593,750	
	high			$4,950	950		4,702,500
Total Cost						$1,495,552	$7,942,432

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also tentatively concludes that the special controls guidance document identified by this rule contains new information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the draft guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex''; the notice contains an analysis of the paperwork burden for the draft guidance.

VIII. Specific Request for Comments

FDA welcomes comments on all aspects of the proposed regulation, but particularly invites comments on the following issues:

As discussed in more detail in section IV of this document, FDA specifically requests comments on whether its labeling recommendations for condoms should include more detailed information on the prevention of genital HPV infection, and information on different approaches for prevention of cervical cancer.

In addition, as discussed in section IV of this document, FDA specifically requests comments on whether this special control is sufficient to provide a reasonable assurance of the safety and effectiveness of latex condoms with spermicidal lubricant containing N–9, or whether there are other special controls that FDA should consider. FDA also requests comments on whether special controls alone are sufficient to provide a reasonable assurance of the safety and effectiveness of latex condoms with spermicidal lubricant containing N–9 or whether the risks of N–9 outweigh the potential contraceptive benefits the spermicide adds to the barrier protection of condoms.

Finally, as discussed in section IV of this document, the current special control proposal applies only to latex condoms. FDA acknowledges, however, that concerns regarding N–9 in condoms with spermicidal lubricant would appear to be very similar for all condoms, nonlatex as well as latex. For purposes of making a future proposal, FDA solicits comment on possible special controls for nonlatex (including both skin and synthetic) condoms containing N–9. FDA solicits comments on whether the guidance currently proposed as a special control only for latex condoms, insofar as it addresses risks associated with N–9, should be proposed as that special control. FDA also welcomes comments suggesting alternative special controls for nonlatex condoms with N–9. Moreover, FDA also welcomes comments on potential special controls for nonlatex condoms without N–9.

IX. General Request for Comments

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

X. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

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List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5300 is revised to read as follows:

§ 884.5300 Condom.

(a) *Identification*. A condom is a sheath which completely covers the penis with a closely fitting membrane.

The condom is used for contraceptive and for prophylactic purposes (preventing transmission of sexually transmitted diseases). The device may also be used to collect semen to aid in the diagnosis of infertility.

(b) *Classification.* (1) Class II (special controls) for condoms made of materials other than natural rubber latex, including natural membrane (skin) or synthetic.

(2) Class II (special controls) for natural rubber latex condoms. The guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex'' will serve as the special control. See § 884.1(e) for the availability of this guidance document.

3. Section 884.5310 is revised to read as follows:

§ 884.5310 Condom with spermicidal lubricant.

(a) *Identification.* A condom with spermicidal lubricant is a sheath which completely covers the penis with a closely fitting membrane with a lubricant that contains a spermicidal agent, nonoxynol–9. This condom is used for contraceptive and for prophylactic purposes (preventing transmission of sexually transmitted diseases).

(b) *Classification.* (1) Class II (special controls) for condoms made of materials other than natural rubber latex, including natural membrane (skin) or synthetic.

(2) Class II (special controls) for natural rubber latex condoms. The guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex'' will serve as the special control. See § 884.1(e) for the availability of this guidance document.

Dated: June 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–22611 Filed 11–10–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 251, and 280

RIN 1010–AD23

Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf (OCS)—Recovery of Costs Related to the Regulation of Oil and Gas Activities on the OCS

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS is proposing regulations which impose new fees to process certain plans, applications, and permits. The proposed service fees would offset MMS's costs of processing these plans, applications, and permits.

DATES: MMS will consider all comments received by January 13, 2006. MMS will begin reviewing comments and may not fully consider comments received after January 13, 2006.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods listed below. Please use the regulatory identifier number (RIN) 1010-AD23 as an identifier in your message. See also Public Comment Procedures under Procedural Matters.

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions on the website for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Use the RIN in the subject line.
- Fax: 703–787–1546. Identify with the RIN.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Recovery of Costs Related to the Regulation of Oil and Gas Activities on the OCS–AD23'' in your comments.

You may also send comments on the information collection aspects of this rule directly to the Office of Management and Budget (OMB) via: OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); mail or hand carry to the Office of Information and Regulatory Affairs, OMB Attention: Desk Officer for the Department of the Interior (1010–AD23) or by fax (202) 395–6566. Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: Martin Heinze, Program Analyst, Office of Planning, Budget and International Affairs at (703) 787–1010.

SUPPLEMENTARY INFORMATION:

Background

Federal agencies are generally authorized to recover the costs of providing services to non-federal entities through the provisions of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701. The Act requires implementation through rulemaking. There are several policy documents that provide MMS guidance on the process of charging applicants for service costs. The governing language concerning cost recovery can be found in OMB Circular No. A–25 which states in part, ''The provisions of this Circular cover all federal activities that convey benefits to recipients beyond those accruing to the general public. * * * When a service (or privilege) provides special benefits to an identifiable recipient, beyond those that accrue to the general public, a charge would be imposed (to recover the full costs to the Federal Government for providing this specific benefit, or the market price). * * * The general policy is that user charges will be instituted through the promulgation of regulations.'' The Department of the Interior (DOI) Manual mirrors this policy (330 DM 1.3 A.).

In this rulemaking, ''cost recovery'' means reimbursement to MMS for its costs of performing a service by charging a fee to the identifiable applicant/beneficiary of the service. Further guidance is provided by Solicitor's Opinion M–36987, ''BLM's Authority to Recover Costs of Minerals Document Processing'' (December 5, 1996). As explained in that Solicitor's Opinion, some costs, such as the costs of programmatic environmental studies and programmatic environmental assessments in support of a general agency program are not recoverable because they create an ''independent public benefit'' rather than a specific benefit to an identifiable recipient. Id. at 9–10.

On March 25, 2005, MMS published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** titled, ''Recovery of Costs Related to the Regulation of Oil and Gas Activities on the Outer Continental Shelf,'' (70 FR 15246). (The cost recovery fees MMS is addressing in this proposed rule are for different activities than those addressed in the recently promulgated final rule issued on August 25, 2005 (70 FR 49871)). Through the ANPR, MMS alerted the public that we seek to recover the costs of processing certain permits and applications through the rulemaking process. MMS believes that cost recovery for the MMS-provided service of reviewing and

approving applications and permits is warranted because such service provides an identifiable recipient—the applicant—with direct benefits beyond those received by the general public.

The ANPR invited comments, recommendations, and specific remarks on a program of collecting fees for reviewing certain plans and permit applications such as:

- Exploration Plans (§ 250.203).
- Development and Production Plans (§ 250.204).
- Deep Water Operations Plans (Notice To Lessees No. 2000–N06).
- Application for Permit to Drill (APD; form MMS–123).
- Application for Permit to Modify (APM; form MMS–124).
- Application to Remove a Platform (required by § 250.1727).
- Facility Permits (required by § 250.901 for the installation, modification, or repair of a platform).
- Conservation Information Documents (Notice to Lessees No. 2000-N05).
- Geological and Geophysical (G&G) Permits: Permit for Geophysical Exploration for Mineral Resources or Scientific Research on the Outer Continental Shelf (form MMS–328); Permit for Geological Exploration for Mineral Resources or Scientific Research on the OCS (form MMS–329).
- Sand and Gravel Permits: Permit for Geophysical Prospecting for Mineral Resources or Scientific Research on the Outer Continental Shelf Related to Minerals Other than Oil, Gas, and Sulphur (form MMS–135); Permit for Geological Prospecting for Mineral Resources or Scientific Research on the Outer Continental Shelf Related to Minerals Other than Oil, Gas, and Sulphur (form MMS–136). The ANPR also solicited specific comments on the following:

1. Are there other actions for which MMS should require fees to recover costs from operators?
2. MMS plans to calculate the fees in a manner similar to that used in the recently published Cost Recovery Rule (RIN 1010–AD16, August 25, 2005, 70 FR 49871). Are there alternative ways to determine fair and equitable fees?
3. MMS may have large cost differences associated with issuing permits and reviewing plans in the different Regions (Gulf of Mexico, Pacific, Alaska); should the fee be uniform nationwide or vary by Region?

Comments on the ANPR

MMS received nine comment letters from industry and the general public. Four of the comment letters complained that there was insufficient time (30 days) provided for comment in the ANPR. The commenters asked for an extension of the comment period that ranged from 30–45 days. One commenter provided examples of recent comment time frames on MMS rulemakings that ranged from 30–90 days, and suggested that future rules have a standard comment period of either 60 or 90 days.

An ANPR simply informs the public that an agency expects to publish a proposed rule. Because the public is given another opportunity to comment in connection with the proposed rule, MMS believes that 30 days is a sufficient comment period for an ANPR. This proposed rule now being published has a 60-day comment period.

Three comment letters presented more extensive views of the offshore oil and gas industry. Two letters were from individual companies, and one letter was from a consortium of eight trade organizations that represented thousands of companies involved in the United States (U.S.) oil and gas industry. In general, industry respondents stated that the total of lease bonuses, rentals and royalty fees paid by industry adequately compensate MMS and the Federal Government for any service provided in the issuance of permits. Several commenters pointed to the MMS statistics for monies collected as proof that the Federal Government had been adequately compensated for the process of issuing offshore leases as well as ''for processing the necessary paperwork required by regulations to facilitate lessees bringing their leases to production.''

The relevant mineral leasing law (the Outer Continental Shelf Lands Act (OCSLA)), which granted the Secretary the authority to issue leases offshore on the OCS, was not enacted as a cost recovery mechanism. The monies collected as bonuses, rentals, and royalties under those leases are not intended to compensate the government for administrative costs. They instead reflect the value of the public's interest in the resource and property. When a lease is issued, the working interest is conveyed to the lessee(s) to whom it is issued. The government reserves a royalty interest, which is a cost-free share of the production or the value of the production. Under the bidding system that is characteristic of most of the leases, the lessee pays a bonus to obtain the lease that is the result of competitive bidding. During the primary term of a lease and before the lease goes into production (in other words, during the time the lessor is not receiving any benefit from its retained royalty interest), the lessee must pay annual rentals. All of these obligations (royalties, bonus payments and rentals) reflect the value of the lessor's (*i.e.*, the public's) property interest in the leased minerals. None of these obligations was ever intended to compensate the government for administrative costs.

In a related remark, one industry commenter asserted that a document cited by MMS, OMB Circular No. A–25, provides that new user charges should not be imposed in cases where other revenues from individuals already finance the government services provided to them. The commenter appears to be citing paragraph 7.c. of OMB Circular No. A–25, which addresses excise taxes. The paragraph states that ''[n]ew user charges should not be proposed in cases where an excise tax currently finances the government services that benefit specific individuals'' (giving the example of a gasoline tax to finance highway construction). Royalties, bonus payments, and rentals are not taxes, but payments that reflect the value of the resources. Reference to this paragraph of the OMB Circular is thus inappropriate.

Several commenters asserted that because neither existing lease terms nor regulations in effect at the time of lease issuance contain provisions allowing the new cost recovery fees, regulations imposing such fees that are promulgated after lease issuance ''are not within the scope of the contract''. They cite *Mobil Exploration and Producing Southeast, Inc.* v. *United States*, 530 U.S. 604 (2000), as standing for the proposition that offshore leases are subject only to regulations in existence at the time of lease issuance and those promulgated thereafter that concern prevention of waste and conservation of resources.

These comments fail to acknowledge that the Independent Officers Appropriation Act (IOAA), the statute under whose authority MMS is promulgating this rule, was enacted in 1952, and predates the OCSLA and the leases issued under the authority of that Act. The comments also misinterpret the *Mobil* decision. In *Mobil*, the Supreme Court addressed a statute enacted by Congress years after lease issuance (the Outer Banks Protection Act) whose substantive effect was to prohibit exploration of a certain class of existing leases. The Supreme Court held the statute to be a breach of contract on the part of the U.S. The Supreme Court in *Mobil* did not address regulations promulgated under authority already granted to the Secretary under a statute that predated the leases involved.

Only two commenters responded to the MMS list of specific questions. These commenters: (1) Did not agree

that MMS should charge the proposed fees and, therefore, had no suggestions for additional cost recovery; (2) did not propose alternative methods for determining fees (they did, however, recommend that MMS continue efforts to improve cost effectiveness and provide specific details on how any fees are to be determined); and (3) suggested that fees be assigned to the different regions based on the actual costs in those regions.

Regarding this last suggestion, MMS found, first, that the number of plans and permits processed in the Pacific and Alaska OCS Regions is very small. More than 98 percent of the MMS plan and permit applications processed are in the Gulf of Mexico (GOM) OCS Region. Second, MMS found that, due to the smaller number of plans in the Pacific and Alaska OCS Regions, and the controversy often involved with them, the processing costs per plan or permit in those regions are considerably higher than in the Gulf of Mexico OCS Region. MMS has determined that because of the higher expense and the small number of plans, applications and permits MMS processed in the Pacific and Alaska Regions, it is reasonable to set as the standard fee for all such activities the average cost for the GOM OCS Region. This fee structure will avoid creating disparity among leases in different parts of the country, due to unusual conditions in some regions, for receiving a similar final determination from MMS.

Regarding the comment that MMS should improve its cost and effectiveness, MMS will continue in its efforts to reduce costs through initiatives such as OCS Connect, a multi-year initiative to automate major business transactions and plan/application/permit reviews, resulting in more timely decisions.

One citizen commented that fees should also be recovered on applications for lease term pipelines; seismic data acquisition; surface co-mingling of OCS production; and applications for departures from operational requirements. All but the applications for departures have been included in the proposed rule. Departures were not included because departure requests are almost always part of another permit application.

Finally, several commenters believed that the fees proposed by the ANPR seem contrary to the administration's national energy policy. They maintained that every dollar collected by MMS for the processing of applications and permits is a dollar that would not be spent producing energy on the OCS.

MMS works closely with industry to ensure that energy production on the OCS will continue to contribute significantly to the nation's energy supply. For example, MMS provides incentives for industry production of offshore oil and gas, such as royalty relief for deep-water and deep-gas development. The proposed service fees would not affect existing incentives and would only marginally add to the cost of operating offshore.

Proposed Regulation

What Type of Fees Does This Proposed Rule Propose?

MMS is proposing fixed fees for certain services based on cost recovery principles. A fixed fee would remain the same for each request of a similar type. The fixed fee approach would provide objectivity and certainty because each applicant's fees are based on the same predetermined fee structure.

Which MMS Services Would Be Subject To a Cost Recovery Fee?

The following table lists the plan/application/permit requests for which we are proposing a cost recovery fee under this proposed rule. The table includes some additional requests that were not included in the ANPR.

Service: processing of the following . . .	Proposed fee	30 CFR citation
Exploration Plan (EP)	$3,250 for each surface location	§ 250.211(d).
Development and Production Plan (DPP)/Development Operations Coordination Document (DOCD).	$3,750 for each well proposed	§ 250.241.
Deepwater Operations Plan	$3,150	§ 250.292.
Conservation Information Document	$24,200	§ 250.296.
Application for Permit to Drill (APD; form MMS–123).	$1,850 Initial applications only, no fee for revisions.	§ 250.410(d); § 250.411; § 250.460; § 250.513; § 250.515; § 250.1605; § 250.1617; § 250.1622.
Application for Permit to Modify (APM; form MMS–124).	$110	§ 250.460; § 250.465; § 250.513; § 250.515; § 250.613; § 250.615; § 250.1618; § 250.1622; § 250.1704.
New Facility Production Safety System Application.	$4,750 (> 125 components). (Additional fee of $12,500 will be charged if MMS deems it necessary to visit a facility offshore; and $6,500 to visit a facility in a shipyard). $1,150 (25–125 components). (Additional fee of $7,850 will be charged if MMS deems it necessary to visit a facility offshore; and $4,500 to visit a facility in a shipyard). $570 (< 25 components).	§ 250.802(e)
Production Safety System Application—Modification.	$530 (> 125 components). $190 (25–125 components). $80 (< 25 components).	§ 250.802(e).
Platform Application— Installation—under the Platform Verification Program.	$19,900	§ 250.905(k).
Platform Application—Installation—Fixed Structure Under the Platform Approval Program.	$2,850	§ 250.905(k).
Platform Application—Installation—Caisson/Well Protector.	$1,450	§ 250.905(k).
Platform Application—Modification	$3,400	§ 250.905(k).
New Pipeline Application—Lease Term	$3,100	§ 250.1000(b).
Pipeline Application—Modification (Lease Term)	$1,800	§ 250.1000(b).
Pipeline Application—Modification (ROW)	$3,650	§ 250.1000(b).
Pipeline Repair Notification	$340	§ 250.1008(e).

Service: processing of the following . . .	Proposed fee	30 CFR citation
Complex Surface Commingling and Measurement Application.	$3,550 (see proposed rule text)	§ 250.1204(a).
Simple Surface Commingling and Measurement Application.	$1,200 (see proposed rule text)	§ 250.1204(a).
Application to Remove a Platform	$4,100	§ 250.1727.
Application to Decommission a Pipeline (Lease Term).	$1,000	§ 250.1751 and § 250.1752.
Application to Decommission a Pipeline (ROW)	$1,900	§ 250.1751 and § 250.1752.
Permit for Geological or Geophysical Exploration for Mineral Resources or Scientific Research on the OCS related to oil, gas and Sulphur.	$1,900	§ 251.5 (form MMS–327).
Permit for Geological or Geophysical Prospecting for Mineral Resources or Scientific Research on the OCS Related to Minerals Other than Oil, Gas, and Sulphur.	$1,900	§ 280.12 (form MMS–134).

How Did MMS Determine the Costs To Be Covered By the Proposed Fees and What Are the Fee Amounts Based On?

The cost methodology used in developing the fee schedule for the proposed rule includes the sum of direct costs and indirect costs. Direct costs are comprised of the salaries, benefits, materials and contracts/equipment (including information technology) and direct support costs attributed to processing each step of a request.

Steps include receiving, validating and entering data, technical and administrative review of the plan/application/permit for compliance with safety and other regulatory requirements, assessing the nature of the impact, National Environmental Policy Act (NEPA) analysis or Categorical Exclusion Reviews (CERs), and site visits, if required.

Indirect costs include centrally paid items such as telecommunications, space, utilities, security, property management, workman's compensation and unemployment compensation, as well as bureau support functions such as personnel services, finance, procurement, and management. The indirect rate applied to MMS direct costs is 21.5 percent.

MMS is using a cost estimation methodology based on its Activity Based Costing (ABC) System. ABC provides reasonable managerial accounting for costs and provides a sound basis for establishing the costs in this rule.

Fiscal Year 2004 was the baseline year used for the cost analysis of user-submitted plans/applications/permits. MMS used FY 2004 activity-based costing data collected through its timekeeping and financial systems. Non-labor and labor costs are coded to MMS work activities. Each MMS employee codes his or her order time to work activities as part of payroll timekeeping. Examples of MMS work activities include: Process Exploration Plans, Process Well Permits, and Perform NEPA Compliance for Development Plans and Permit Applications.

MMS has adjusted the FY 2004 baseline plan/permit costs by the FY 2005 New Orleans general schedule increase and locality adjustment of 3.26 percent (salary adjustment for federal employees). We incorporated this adjustment into the fee schedule.

Only direct and indirect costs incurred in the direct support of processing plans/applications/permits were included in the cost analysis. Costs were determined as follows:

1. The FY 2004 work activity labor costs recorded by each employee supporting the plans/applications/permits processes were analyzed along with organizational non-labor costs. These individual employee and non-labor cost breakdowns were reviewed by the managers responsible for each group of employees. The managers verified the accuracy of the labor costs and non-labor costs and made adjustments if necessary. Non-labor costs include travel, printing, transportation, contracts, equipment purchases, data backup and operation and maintenance (O&M) costs for MMS' TIMS (Technical Information Management System). For TIMS costs, MMS determined the number of modules or objects in TIMS that assist in the review and approval of plans/applications/permits and compared that number to the total number of modules or objects in TIMS. We then used this ratio to calculate the proportion of TIMS O&M costs included in the cost analysis for these fees. IT infrastructure (desktop & network), O&M and management/administrative support costs were determined using the ratio of the plan/permit approval processes costs to the program's total costs.

2. Each GOM Region District is approximately the same size and has a similar workload. District permit work activity costs were assigned to different types of permits using a weighted percentage distribution from the activity-based costing system.

3. MMS indirect costs have been allocated to individual plans/applications/permits based on a flat bureau-wide indirect cost rate of 21.5 percent applied to the program's total plan/permit cost. The indirect rate was calculated bureau-wide for all MMS cost purposes using FY 2004 costs and is consistent with the rate charged for MMS administrative reimbursable agreements.

This full cost analysis differs slightly from the methodology used in the final MMS cost recovery rulemaking published on August 25, 2005 (70 FR 49871). MMS completed its second year of bureau-wide activity-based-costing at the end of FY 2004. MMS evaluated the reliability of its FY 2004 data and determined that it was reliable (with minor adjustments) for cost recovery analysis. Since this data was not fully available when the recent final rule was developed, that rule used employee surveys to identify processing costs rather than using costs coded to work activities. MMS is confident that both methodologies produce reliable cost data, but since data is now available, this proposed rule uses actual work activity (ABC) data coded into the MMS financial system as the basis for its cost analysis.

MMS is not proposing to recover the following costs in this proposed rule:

1. *Operational and Safety Research*—Information derived from this program is directly integrated into MMS's offshore operations and is used to make decisions pertaining to plans, safety and pollution inspections, enforcement actions, and training requirements. MMS cannot approve plans proposing

the use of new technology without this type of evaluation. MMS is examining these costs and is not proposing to recover these costs at this time.

2. Regulation Development—MMS spends more than $1 million yearly developing regulations and guidance for the planning and permitting process. MMS is examining these costs and is not proposing to recover these costs at this time.

3. Work activities funded by the Oil Pollution Act of 1990—This includes research conducted to prevent or cleanup oil spills. It also includes the work of Regional and District engineers whose salaries are paid by funds provided to MMS under this Act. These costs have already been paid by industry through their contributions to the Oil Spill Liability Trust Fund through a five-cent per barrel fee on imported and domestic oil that was collected until December 31, 1994.

How Did MMS Round Fees?

MMS rounded fees in the following manner. Fees calculated to be less than $1,000 have been rounded down or up to the nearest $10. Fees $1,000–$10,000 have been rounded down or up to the nearest $50. Fees above $10,000 have been rounded down or up to the nearest $100.

Would the Proposed Fees Be Adjusted for Inflation?

Yes. Since MMS used current salary and expense levels, the cost figures we generated reflect current dollars. To keep the service fees in line with inflation, we propose to adjust the fees periodically according to the Implicit Price Deflator for the Gross Domestic Product (GDP), starting in 2005 dollars. This inflation index, as published by the U.S. Department of Commerce, is generally accepted by economists as the most reliable general price index and is used by MMS for other inflation adjustments. MMS would amend the fees by publication in the **Federal Register**. Because we are proposing to establish the process for changing fees in this rule and the application of that process is simply a mathematical calculation, new rulemaking would not be necessary when adjustments are made. MMS would also review our costs for administering each type of request every 2 years. If MMS decides to amend fees based on this analysis, we would do so through notice and comment rulemaking.

How would MMS handle the payment of fees for denied requests or verbal approvals? Would there be any refunds?

Fees proposed in this rule would be non-refundable. However, if a request is deemed not complete, an additional fee would not be charged for its resubmission. Any verbal approvals that MMS provides would need to be preceded by payment of the applicable fee. MMS is currently considering the different payment options available, and would notify lessees of the available payment options via a Notice to Lessees or notice in a final rule.

Are Fixed Fees Appealable?

No. The amount of a fixed fee would not be appealable to the Interior Board of Land Appeals because it is set by regulation. There is no discretion to change it.

Procedural Matters

Public Comment Procedures: All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. MMS's practice is to make comments, including names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. Except for proprietary information, 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.

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) The proposed rule would not have an annual effect of $100 million or more on the economy. It would 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. This proposed rule would establish fees based on cost recovery principles. Based on historical filings, we project the fees would raise revenue by approximately $16.5 million annually.

(2) The proposed rule would not create a serious inconsistency or otherwise interfere with action taken or planned by another agency because the costs incurred are for specific MMS services and other agencies are not involved in these aspects of the OCS Program.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. This change would have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs. The fees proposed in this rule are service fees based on cost recovery, and not user fees.

(4) This proposed rule would not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

The changes proposed in the rule would affect lessees and operators of leases and pipeline right-of-way holders on the OCS. This includes about 130 active federal oil and gas lessees and 115 pipeline rights-of-way holders. Small lessees that operate under this rule fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This proposed rule, therefore would affect a substantial number of small entities.

The fees proposed in the rule would not have a significant economic effect on a substantial number of small entities because the fees are small compared to normal costs of doing business on the OCS. For example, depending on water depth and well depth, cost estimates for drilling a well range from $5 million to $23 million. Thus, the proposed fees, ranging from $80 to $24,200, are dwarfed by the millions of dollars that industry already commits to exploration, development, production, and transportation.

MMS conducted an additional analysis to study the potential impacts of these fees on small entities. MMS charted the 2004 production of all companies operating on the OCS. Using corresponding rolling annual average

prices, MMS calculated each company's federal OCS gross revenues. Using TIMS (and other databases) 2004 company data, plan/application/permit fees were calculated and compared with each company's calculated gross revenue. The analysis indicates that no company would have its offshore revenues affected by 0.5 percent or more.

MMS does not have revenue data for most of the 115 pipeline right-of-way holders. However, MMS does not expect the companies to be significantly impacted.

Additionally, the service fees established in the rule would apply in a non-discriminating way to both large and small firms. Also, applying for MMS services provides a benefit to both a large and small applicant if the applicant decides to operate on the OCS.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

(c) Would 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. Leasing on the U.S. OCS is limited to residents of the U.S. or companies incorporated in the U.S. This proposed rule would not change that requirement.

Unfunded Mandates Reform Act (UMRA) of 1995

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the proposal would not affect state, local, or tribal governments, and the effect on the private sector is small.

Takings Implication Assessment (TIA) (Executive Order 12630)

The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a TIA according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this proposed rule would not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the federal and state governments. To the extent that state and local governments have a role in OCS activities, this proposed rule would not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, MMS finds that this proposed rule would not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the E.O. MMS consulted with the Department of the Interior Office of the Solicitor throughout this drafting process.

Paperwork Reduction Act (PRA) of 1995

The proposed rulemaking relates to 30 CFR part 250, subparts B, D, E, H, I, J, L, P, and Q; 30 CFR part 251; and 30 CFR part 280. The rulemaking affects the information collections for these regulations but would not change the approved burden hours; it would just add the associated fees. Therefore, OMB has ruled that there is no change in the information collection and that MMS does not need to make a formal submission by Form OMB 83–I for this rulemaking. If the rule is finalized, we will submit Form OMB 83–C to add the fees in each collection.

OMB has approved the information collections for the affected regulations at 30 CFR part 250, subpart B, 1010–0151; subpart D, 1010–0141; subpart E, 1010–0067, subpart H, 1010–0059; subpart I, 1010–0149; subpart J, 1010–0050; subpart L 1010–0051; subpart P, 1010–0086, subpart Q, 1010–0142; 30 CFR part 251, 1010–0048; and 30 part CFR 280, 1010–0072.

National Environmental Policy Act (NEPA) of 1969

The MMS has determined that this rule is administrative and involves only procedural changes addressing fee requirements. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the NEPA, pursuant to 516 DM 2.3A and 516 DM 2, Appendix 1, Item 1.10.

In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 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 categories of action which do not individually or cumulatively have a significant effect on the human environment and which have no such effect in procedures adopted by a federal agency and therefore require neither an environmental assessment nor an environmental impact statement.

Effects on the Nation's Energy Supply (Executive Order 13211)

E.O. 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This proposed rule is not a significant energy action, and therefore would not require a Statement of Energy Effects because it:

(1) Is not a significant regulatory action under E.O. 12866,

(2) Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

(3) Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, this proposed rule would not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

Clarity of This Regulation

E.O. 12866 requires each agency to write regulations that are easy to understand. MMS invites your comments on how to make this

proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the rule in the ''Supplementary Information'' section of this preamble helpful in understanding the rule? What else can MMS do to make the rule easier to understand?

Send a copy of any comments that concern how MMS could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 280

Continental shelf, Public lands—mineral resources, Reporting and recordkeeping requirements, Research.

Dated: October 24, 2005.

Chad Calvert,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR parts 250, 251, and 280 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*; 31 U.S.C. 9701.

2. In § 250.125, revise the table in paragraph (a) and paragraph (b) to read as follows:

§ 250.125 Service Fees

(a) * * *

SERVICE FEE TABLE

Service—processing of the following:	Fee amount	30 CFR citation
Change in Designation of Operator	$150	§ 250.143.
Suspension of Operators/Suspension of Production (SOO/SOP) Request.	$1,800	§ 250.171.
Exploration Plan (EP)	$3,250 for each surface location	§ 250.211(d).
Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD).	$3,750 for each well proposed	§ 250.241(e).
Deepwater Operations Plan	$3,150	§ 50.292(p). §250.296(a).
Conservation Information Document	$24,200	§ 250.296(a).
Application for Permit to Drill (APD; form MMS–123).	$1,850. Initial applications only, no fee for revisions.	§ 250.410(d); § 250.411; § 250.460; § 250.513(b); § 250.515; § 250.1605; § 250.1617(a); § 250.1622.
Application for Permit to Modify (APM; form MMS–124).	$110	§ 250.460; § 250.465(b); § 250.513(b); § 250.515; § 250.613(b); § 250.615; § 250.1618(a); § 250.1622; § 250.1704(g).
New Facility Production Safety System Application for facility with more than 125 components.	$4,750 (Additional fee of $12,500 will be charged if MMS deems it necessary to visit a facility offshore; and $6,500 to visit a facility in a shipyard).	§ 250.802(e).
New Facility Production Safety System Application for facility 25–125 components.	$1,150 (Additional fee of $7,850 will be charged if MMS deems it necessary to visit a facility offshore; and $4,500 to visit a facility in a shipyard).	§ 250.802(e).
New Facility Production Safety System Application for facility with fewer than 25 components.	$570	§ 250.802(e).
Production Safety System Application—Modification with more than 125 components reviewed.	$530	§ 250.802(e).
Production Safety System Application—Modification with 25–125 components reviewed.	$190	§ 250.802(e).
Production Safety System Application—Modification with fewer than 25 components reviewed.	$80	§ 250.802(e).
Platform Application—Installation—under the Platform Verification Program.	$19,900	§ 250.905(k).
Platform Application—Installation—Fixed Structure Under the Platform Approval Program.	$2,850	§ 250.905(k).
Platform Application—Installation—Caisson/Well Protector.	$1,450	§ 250.905(k).
Platform Application—Modification	$3,400	§ 250.905(k).
New Pipeline Application (Lease Term)	$3,100	§ 250.1000(b).
Pipeline Application—Modification (Lease Term)	$1,800	§ 250.1000(b).
Pipeline Application—Modification (ROW)	$3,650	§ 250.1000(b).

SERVICE FEE TABLE—Continued

Service—processing of the following:	Fee amount	30 CFR citation
Pipeline Repair Notification	$340	§ 250.1008(e).
Pipeline Right-of-Way (ROW) Grant Application	$1,800	§ 250.1015.
Pipeline Conversion of Lease Term to ROW	$200	§ 250.1015.
Pipeline ROW Assignment	$170	§ 250.1018.
500 Feet From Lease/Unit Line Production Request.	$3,300	§ 250.1101.
Gas Cap Production Request	$4,200	§ 250.1101.
Downhole Commingling Request	$4,900	§ 250.1106.
Complex Surface Commingling and Measurement Application.	$3,550	§ 250.1204(a).
Simple Surface Commingling and Measurement Application.	$1,200	§ 250.1204(a).
Voluntary Unitization Proposal or Unit Expansion.	$10,700	§ 250.1303.
Unitization Revision	$760	§ 250.1303.
Application to Remove a Platform or Other Facility.	$4,100	§ 250.1727.
Application to Decommission a Pipeline (Lease Term).	$1,000	§ 250.1751(a) or § 250.1752(a).
Application to Decommission a Pipeline (ROW)	$1,900	§ 250.1751(a) or § 250.1752(a).

(b) Payment of the fees listed in paragraph (a) must accompany the submission of the document for approval. Once a fee is paid, it is nonrefundable, even if an application or other request is withdrawn. If your application is returned to you as incomplete, you are not required to submit a new fee with the amended application.

3. In § 250.211, add a new paragraph (d) to read as follows:

§ 250.211 What must the EP include?

* * * * *

(d) *Service fee.* You must include payment of the service fee listed in § 250.125.

4. In § 250.241, add a new paragraph (e) to read as follows:

§ 250.241 What must the DPP or DOCD include?

* * * * *

(e) *Service fee.* You must include payment of the service fee listed in § 250.125.

5. In § 250.292, revise paragraphs (n) and (o); and add a new paragraph (p) to read as follows:

§ 250.292 What must the DWOP contain?

(n) A discussion of any new technology that affects hydrocarbon recovery systems;

(o) A list of any alternate compliance procedures or departures for which you anticipate requesting approval; and

(p) Payment of the service fee listed in § 250.125.

6. In § 250.296, add the following sentence at the end of paragraph (a):

§ 250.296 When and how must I submit a CID or a revision to a CID?

(a) * * * The submission of your CID must be accompanied by payment of the service fee listed in § 250.125.

* * * * *

7. In § 250.410, revise the introductory paragraph and paragraph (d) to read as follows:

§ 250.410 How do I obtain approval to drill a well?

You must obtain written approval from the District Manager before you begin drilling any well or before you sidetrack, bypass, or deepen a well. To obtain approval, you must:

* * * * *

(d) Submit the following to the District Manager:

(1) An original and two complete copies of form MMS–123, Application for a Permit to Drill (APD), and form MMS–123S, Supplemental APD Information Sheet;

(2) A separate public information copy of forms MMS–123 and MMS–123S that meets the requirements of § 250.127; and

(3) Payment of the service fee listed in § 250.125.

8. In § 250.465, revise paragraph (b)(1) to read as follows:

§ 250.465 When must I submit an Application for Permit to Modify (APM) or an End of Operations Report to MMS?

* * * * *

(b) * * *

(1) Your APM (form MMS–124) must contain a detailed statement of the proposed work that would materially change from the approved APD and the submission of your APM must be accompanied by payment of the service fee listed in § 250.125:

* * * * *

9. In § 250.513, revise the last sentence in paragraph (a); and revise the introductory language of paragraph (b) and paragraphs (b)(3) and (4) and adding paragraph (b)(5) to read as follows:

§ 250.513 Approval and reporting of well-completion operations.

(a) * * * If the completion has not been approved or if the completion objective or plans have significantly changed, approval for such operations must be requested on Form MMS–124, Application for Permit to Modify (APM).

(b) You must submit the following with Form MMS–124 (or with Form MMS–123; Form MMS–123S):

* * * * *

(3) For multiple completions, a partial electric log showing the zones proposed for completion, if logs have not been previously submitted;

(4) When the well-completion is in a zone known to contain H_2S or a zone where the presence of H_2S is unknown, information pursuant to § 250.490 of this part; and

(5) Payment of the service fee listed in § 250.125.

* * * * *

10. In § 250.613, revise the last sentence in paragraph (a) and revise the introductory language of paragraph (b) and paragraphs (b)(2) and (3) and adding (b)(4) to read as follows:

§ 250.613 Approval and reporting for well-workover operations.

(a) * * * Approval for such operations must be requested on Form

MMS–124, Application for Permit to Modify.

(b) You must submit the following with Form MMS–124:

* * * * *

(2) When changes in existing subsurface equipment are proposed, a schematic drawing of the well showing the zone proposed for workover and the workover equipment to be used;

(3) Where the well-workover is in a zone known to contain H_2S or a zone where the presence of H_2S is unknown, information pursuant to § 250.490 of this part; and

(4) Payment of the service fee listed in § 250.125.

* * * * *

11. In § 250.802, add a new paragraph (e)(7) to read as follows:

§ 250.802 Design, installation, and operation of surface production safety systems.

* * * * *

(e) * * *

(7) The service fee listed in § 250.125 of this part. The fee you must pay will be determined by the number of components involved in the review and approval process.

12. In § 250.905, revise the introductory language and table headings add paragraph (k) to the table to read as follows:

§ 250.905 How do I get approval for the installation, modification, or repair of my platform?

The Platform Approval Program requires that you submit the information, documents and fees listed in the following table for your proposed project.

Required submittal	Required contents	Other requirements j
*	*	*
(k) Payment of the service fee listed in § 250l.125.		

13. In § 250.1000, revise paragraph (b) to read as follows:

§ 250.1000 General Requirements.

* * * * *

(b) An application must be accompanied by payment of the service fee listed in § 250.125 and submitted to the Regional Supervisor and approval obtained before:

(1) Installation, modification or abandonment of a lease term pipeline

(2) Installation or modification of a right-of-way (other than lease term) pipeline; or

(3) Modification or relinquishment of a pipeline right-of way.

* * * * *

14. In § 250.1008, revise paragraph (e) to read as follows:

§ 250.1008 Reports.

* * * * *

(e) The lessee or right-of-way holder must notify the Regional Supervisor before the repair of any pipeline or as soon as practicable. Your notification must be accompanied by payment of the service fee listed in § 250.125. You must submit a detailed report of the repair of a pipeline or pipeline component to the Regional Supervisor within 30 days after the completion of the repairs. In the report you must include the following:

(1) Description of repairs,

(2) Results of pressure test, and

(3) Date returned to service.

* * * * *

15. In § 250.1204, revise paragraph (a)(1) to read as follows:

§ 250.1204 Surface commingling.

(a) * * *

(1) Submit a written application to, and obtain approval from, the Regional Supervisor before commencing the commingling of production or making changes to previously approved commingling applications. Your application must be accompanied by payment of the service fee listed in § 250.125. The service fees are divided into two levels for simple applications and complex applications.

Application type	Actions
(i) Simple applications consist of those that update or correct previously approved measurement and commingling records such as:	Lease terminations. Well status changes. Well name changes. Platform removals. Application cancellations FMP status changes. Meter updates. Operator changes. Meter proving and well test waivers. Applications to temporarily reroute production. Production tests prior to pipeline construction.
(ii) Complex applications include applications not categorized as simple and entail:	Creation of a new facility measurement points (FMPs). Association of leases or units to existing FMPs. Inclusion of production from additional structures. Meter updates which add buy-back gas meters or pigging meters. Other applications which are deviations from the approved allocation procedures.

* * * * *

16. In § 250.1617, revise paragraph (a) to read as follows:

§ 250.1617 Application for permit to drill.

(a) Before drilling a well under an approved Exploration Plan, Development and Production Plan, or Development Operations Coordination Document, you must file Form MMS–123, APD, with the District Manager for approval. The submission of your APD must be accompanied by payment of the service fee listed in § 250.125. Before

starting operations, you must receive written approval from the District Manager unless you received oral approval under § 250.140.

* * * * *

17. In § 250.1618, revise the section heading and paragraph (a) to read as follows:

§ 250.1618 Application for Permit to Modify.

(a) You must submit requests for changes in plans, changes in major drilling equipment, proposals to deepen, sidetrack, complete, workover, or plug back a well, or engage in similar activities to the District Manager on Form MMS–124, Application for Permit to Modify (APM). The submission of your APM must be accompanied by payment of the service fee listed in § 250.125. Before starting operations associated with the change, you must receive written approval from the District Manager unless you received oral approval under § 250.140.

* * * * *

18. In § 250.1704, revise the Decommissioning Applications and Reports Table to read as follows:

§ 250.1704 When must I submit decommissioning applications and reports?

* * * * *

DECOMMISSIONING APPLICATIONS AND REPORTS TABLE

Decommissioning applications and reports	When to submit	Instructions
(a) Initial platform removal application [not required in the Gulf of Mexico OCS Region].	In the Pacific OCS Region or Alaska OCS Region, submit the application to the Regional Supervisor at least 2 years before production is projected to cease.	Include information required under § 250.1726.
(b) Final removal application for a platform or other facility.	Before removing a platform or other facility in the Gulf of Mexico OCS Region, or not more than 2 years after the submittal of an initial platform removal application to the Pacific OCS Region and the Alaska OCS Region.	Include information required under § 250.1727.
(c) Post-removal report for a platform or other facility.	Within 30 days after you remove a platform or other facility ***.	Include information required under § 250.1729.
(d) Pipeline decommissioning application	Before you decommission a pipeline ***	Include information required under § 250.1751(a) § 250.1752(a), as applicable.
(e) Post-pipeline decommissioning report	Within 30 days after your decommission a pipeline ***.	Include information required under § 250.1753.
(f) Site clearance report for a platform or other facility.	Within 30 days after you complete site clearance verification activities.	Include information required under § 250.1743(b)
(g) Form MMS–124, Application for Permit to Modify (APM). The submission of your APM must be accompanied by payment of the service fee listed in § 250.125.	(1) Before you temporarily abandon or permanently plug a well or zone.	Include information required under §§ 250.1712 and 250.1721.
	(2) Within 30 days after you plug a well	Include information required under § 250.1717.
	(3) Before you install a subsea protective device.	Refer to § 250.1722(a).
	(4) Within 30 days after your complete a protective device trawl test.	Include information required under 250.1722(d).
	(5) Before you remove any casing stub or mud line suspension equipment and any subsea protective device.	Refer to § 250.1723.
	(6) Within 30 days after you complete site clearance verfication activities.	Include information required under § 250.1743(a).

19. In § 250.1727, revise the introductory paragraph to read as follows:

§ 250.1727 What information must I include in my final application to remove a platform or other facility?

You must submit to the Regional Supervisor, a final application for approval to remove a platform or other facility. Your application must be accompanied by payment of the service fee listed in § 250.125. If you are proposing to use explosives, provide three copies of the application. If you are not proposing to use explosives, provide two copies of the application. Include the following information in the final removal application, as applicable:

* * * * *

20. In § 250.1751, revise paragraph (a) introductory text to read as follows:

§ 250.1751 How do I decommission a pipeline in place?

* * * * *

(a) Submit a pipeline decommissioning application in triplicate to the Regional Supervisor for approval. Your application must be accompanied by payment of the service fee listed in § 250.125. Your application must include the following information:

* * * * *

21. In § 250.1752, revise the introductory text of paragraph (a) to read as follows:

§ 250.1752 How do I remove a pipeline?

* * * * *

(a) Submit a pipeline removal application in triplicate to the Regional Supervisor for approval. Your application must be accompanied by payment of the service fee listed in § 250.125. Your application must include the following information:

* * * * *

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

22. The authority citation for part 251 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.;* 31 U.S.C. 9701.

23. In § 251.5, revise paragraph (a) to read as follows:

§ 251.5 Applying for permits or filing Notices.

(a) *Permits.* You must submit a signed original and three copies of the MMS permit application form (Form MMS–327). The form includes names of persons, type, location, purpose, and dates of activity, and environmental and other information. A nonrefundable service fee of $ 1,900 must accompany your application. The time period for extensions is defined on the permit form (Form MMS–328 (Geophysical Prospecting) or MMS–329 (Geological Prospecting)).

* * * * *

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR ON THE OUTER CONTINENTAL SHELF

24. The authority citation for part 280 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*; 42 U.S.C. 4332 *et seq.*; 31 U.S.C. 9701.

25. In § 280.12, revise paragraph (a) to read as follows:

§ 280.12 What must I include in my application or notification?

(a) *Permits.* You must submit to the RD a signed original and three copies of the permit application form (form MMS–134) at least 30 days before the startup date for activities in the permit area. If unusual circumstances prevent you from meeting this deadline, you must immediately contact the RD to arrange an acceptable deadline. The form includes names of persons, type, location, purpose, and dates of activity, as well as environmental and other information. A nonrefundable service fee of $ 1,900 must accompany your application. The time period for extensions is defined on the permit form (Form MMS–135 (Geophysical Exploration) or MMS–136 (Geological Exploration)).

* * * * *

[FR Doc. 05–22504 Filed 11–10–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–131]

RIN 1625–AA11

Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent regulated navigation area on the Chicago Sanitary and Ship Canal on the Illinois Waterway near Romeoville, IL. This permanent regulated navigation area will place navigational and operational restrictions on all vessels transiting through the demonstration electrical dispersal barrier located on the Chicago Sanitary and Ship Canal. This regulated navigation area is necessary to protect vessels and their crews from harm as a result of electrical discharges emitting from the electrical dispersal barrier as vessels transit over it.

DATES: Comments and related materials must reach the Coast Guard on or before December 14, 2005.

ADDRESSES: You may mail comments and related material to Commander (dpw–1) Ninth Coast Guard District, 1240 E.9th Street, Room 2069, Cleveland, OH 44199. The Ninth Coast Guard District Planning and Development Section (dpw–1) 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 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact CDR K. Phillips, Planning and Development Section, Ninth Coast Guard District, Cleveland, OH at (216) 902–6045.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials. If you submit a comment, please include your name and address, identify the docket number for this rulemaking [CGD09–05–131], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail (see **ADDRESSES**). If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period, which may result in a modification to the rule.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a public meeting (see **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

On January 7, 2005, the U.S. Army Corps of Engineers, in close coordination with the U. S. Coast Guard, conducted preliminary safety tests on the electrical dispersal barrier located at Mile Marker 296.5 of the Chicago Sanitary and Ship Canal near Romeoville, IL. This barrier was constructed to prevent Asian Carp from entering Lake Michigan through the Illinois River system by generating a low-voltage electric field across the canal. The Coast Guard and Army Corps of Engineers conducted field tests to ensure the continued safe navigation of commercial and recreational traffic across the barrier; however, results indicated a significant arcing risk and hazardous electrical discharges as vessels transited the barrier posing a significant risk to navigation through the barrier. To mitigate these risks, the proposed rule would place navigational and operational restrictions on all vessels transiting through the vicinity.

On January 26, 2005 a regulated navigational area (RNA) was published in the **Federal Register** (70 FR 3625) as a temporary final rule. The temporary final rule was extended on August 10, 2005 (70 FR 46407). Testing has continued since the regulation was first proposed in January 2005, but has not yet been completed. Preliminary results indicate that further tests and analysis are warranted and that this process may continue for an undetermined period of time. Therefore, the Coast Guard is proposing to establish a permanent RNA.

Discussion of Rule

Until the potential electrical hazards can be rectified, the Coast Guard will require vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements. The regulated navigation area encompasses all waters of the Chicago Sanitary and Ship Canal from the north side of the Romeo Highway Bridge at Mile Marker 296.1 to the aerial pipeline arch located at Mile Marker 296.7. The requirements placed on vessels include: All vessels are prohibited from loitering in the regulated navigation area, vessels may enter the regulated navigation area for the sole purpose of transiting to the other side, and must maintain headway throughout the transit, all personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area, vessels may not moor or lay up on the right or left descending banks in the regulated navigation area, towboats may not make or break tows in the regulated navigation area, vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side, and commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

These restrictions are necessary for safe navigation of the regulated navigation area and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during recent safety tests conducted by the Army Corps of Engineers. Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative. The Commander, Ninth Coast Guard District will designate Captain of the Port, Lake Michigan as his designated representative for the purposes of this rule.

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. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the fact that traffic will still be able to transit through the RNA.

Small Entities

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

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information as to the number of small entities that may be affected. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate whether a substantial number of small entities are affected as more information becomes available.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain 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 offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this 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 made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore we believe this rule should be categorically excluded, under figure 2–1, paragraph 34(g) from further environmental documentation. This temporary rule establishes a regulated navigation area and as such is covered by this paragraph.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.923 to read as follows:

§ 165.923 Regulated Navigation Area between mile markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal located near Romeoville, IL.

(a) *Location.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL between the north side of Romeo Road Bridge Mile Marker 296.1, and the south side of the Aerial Pipeline Mile Marker 296.7.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.13 apply.

(2) All vessels are prohibited from loitering in the regulated navigation area.

(3) Vessels may enter the regulated navigation area for the sole purpose of transiting to the other side, and must maintain headway throughout the transit.

(4) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area.

(5) Vessels may not moor or lay up on the right or left descending banks of the regulated navigation area.

(6) Towboats may not make or break tows in the regulated navigation area.

(7) Vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side.

(8) Commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(c) *Compliance.* All persons and vessels shall comply with this rule and any additional instructions of the Ninth Coast Guard District Commander, or his designated representative. The Captain of the Port, Lake Michigan is a designated representative of the District Commander for the purposes of this rule.

Dated: October 31, 2005.

T.W. Sparks,

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

[FR Doc. 05–22497 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IN–0009; FRL–7996–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Greene County and Jackson County 8-Hour Ozone Nonattainment Areas to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make determinations that the Greene County and Jackson County ozone nonattainment areas have attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). These proposed determinations are based on three years of complete, quality-assured ambient air quality monitoring data for the 2002–2004 seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the areas.

EPA is proposing to approve requests from the State of Indiana to redesignate the Greene County and Jackson County areas to attainment of the 8-hour ozone NAAQS. These requests were submitted by the Indiana Department of Environmental Management (IDEM) on July 15, 2005 and supplemented on September 6, 2005, September 7, 2005, October 6, 2005, and October 20, 2005. In proposing to approve these requests, EPA is also proposing to approve the State's plans for maintaining the 8-hour ozone NAAQS through 2015 in these areas as a revision to the Indiana State Implementation Plan (SIP). EPA is also proposing to find adequate and approve the State's 2015 Motor Vehicle Emission Budgets (MVEBs) for these areas.

In the final rules section of this **Federal Register**, EPA is approving the SIP revisions as a direct final rule without prior proposal, because EPA

views these actions as noncontroversial and anticipates no adverse comments. A detailed rationale for the approvals is set forth in the direct final rule. If we do not receive any adverse comments in response to these direct final and proposed rules, we do not contemplate taking any further action in relation to these proposed rule. If EPA receives adverse comments with respect to an area addressed by these rules, we will publish a timely withdrawal of the action affecting that area, informing the public that the rule will not take effect with respect to that area. EPA will respond to the public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 14, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IN–0009, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. Agency Web site: *http://docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
3. E-mail: *mooney.john@epa.gov*.
4. Fax: (312) 886–5824.
5. Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.
6. Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005-IN–0009. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided and may be made available online at *http://docket.epa.gov/rmepub/*, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov*.

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

I. What Action Is EPA Taking?

EPA is proposing to take several related actions. EPA is proposing to make determinations that the Greene County and Jackson County, Indiana nonattainment areas have attained the 8-hour ozone standard and that Greene and Jackson Counties have met the requirements for redesignation under section 107(d)(3)(E). EPA is thus proposing to approve requests to change the legal designations of the Greene County and Jackson County areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Indiana's maintenance plan SIP revisions for Greene and Jackson Counties (such approval being one of the Clean Air Act criteria for redesignation to attainment status). The maintenance plans are designed to keep Greene and Jackson Counties in attainment of the ozone NAAQS for the next 10 years. Additionally, EPA is announcing its action on the Adequacy Process for the newly-established 2015 MVEBs. The Adequacy comment periods for the 2015 MVEBs began on August 2, 2005, with EPA's posting of the availability of these submittals on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/transp/conform/adequacy.htm*). The Adequacy comment periods for these MVEBs ended on September, 1 2005. No requests for these submittals or adverse comments on these submittals were received during the Adequacy comment periods. Please see the Adequacy Section of this rulemaking for further explanation on this process. Therefore, we are finding adequate and approving the State's 2015 MVEBs for transportation conformity purposes.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

Dated: November 1, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–22465 Filed 11–10–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 110705B]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Proposed rule; additional public hearing.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold an additional public hearing in Key West, Florida for Amendment 13C to the Snapper Grouper Fishery Management Plan. The additional hearing is being added to accommodate those recently impacted by Hurricane Wilma. Earlier public hearings have been noticed. A total of 11 public hearings regarding Amendment 13C will be held. Amendment 13C is intended to eliminate or phase out overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass; and increase red porgy harvest consistent with an updated stock assessment.

DATES: The additional public hearing will be held November 28, 2005, beginning at 6 p.m.

Written comments must be received in the Council office by close of business on November 28, 2005.

ADDRESSES: The hearing will be held at the Key West Hilton Resort and Marina, 245 Front Street, Key West, FL 33040; Phone; 305/294–4000.

Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, or via email to *snappergroupercomments@safmc.net*.

Copies of the public hearing document are available from Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366 or toll free at 866/SAFMC–10.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; email address: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see ADDRESSES) three days prior to the meeting.

Dated: November 7, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–22551 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 218

Monday, November 14, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Extension of Comment Period on Working Principles for Revising the Advisory Council on Historic Preservation's ''Policy Statement Regarding Treatment of Human Remains and Grave Goods''

AGENCY: Advisory Council on Historic Preservation.

ACTION: Extension of comment period.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) has extended until December 2, 2005 the public comment period on the Working Principles for revising the ACHP's ''Policy Statement Regarding Treatment of Human Remains and Grave Goods.'' Those Working Principles were published in the **Federal Register** on September 1, 2005. The extended comment period will afford greater opportunity to all interested parties to review and submit comments on the principles.

DATES: Comments must be received on or before December 2, 2005.

ADDRESSES: Address all comments concerning these working principles to the Archeology Task Force, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. Comments may also be submitted by electronic mail to: *archeology@achp.gov.* Please note that all responses become part of the public record once they are submitted to the ACHP.

FOR FURTHER INFORMATION CONTACT: Dr. Tom McColluch, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004 (202) 606–8505.

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) has extended until Friday, December 2, 2005, the public comment period on the Working Principles to guide any revisions to its ''Policy Statement Regarding Treatment of Human Remains and Grave Goods'' (1988 Human Remains Policy).

Information on the 1988 Human Remains Policy and the Working Principles was published in the **Federal Register** on September 1, 2005 (70 FR 52066–52068). That notice is available on the ACHP Web site at *http://www.achp.gov/archeologytaskforce.html.*

The ACHP's Archeology Task Force will use the comment it receives on the Working Principles to draft any proposed revisions to the 1988 Human Remains Policy. Such proposed revisions will then be subject to further public review and comment. Following this public review process, the Task Force may decide to present a revised policy statement to the full ACHP membership for adoption.

Dated: November 8, 2005.

John M. Fowler,

Executive Director.

[FR Doc. 05–22556 Filed 11–10–05; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 7, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: The Integrity Program (TIP) Data Collection.

OMB Control Number: 0584–0401.

Summary of Collection: The basis for this data collection and reporting system is Part 246.5 of the Women, Infant, and Children (WIC) Program regulations, which requires State agencies to report annually on their vendor monitoring efforts. The data collected from the States serves as a management tool to provide Congress, Office of the Inspector General, senior program managers, as well as the general public, assurances that program funds are being spent appropriately and that every reasonable effort is being made to prevent, detect and eliminate fraud, waste and abuse.

Need and Use of the Information: The Food and Nutrition Service will collect information using form FNS 698, Profile of Integrity Practices and Procedures; FNS 699, the Integrity Profile Report Form; and FNS 700, TIP Data Entry Form. The collected information from the forms will be analyzed and a report is prepared by FNS annually that (1) Assesses State agency progress in eliminating abusive vendors, (2) assesses the level of activity that is being directed to ensuring program integrity, and (3) analyzes trends over a 5-year period. The information is used at the national level in formulating program policy and regulations. At the FNS regional office level, the data is

reviewed to identify possible vendor management deficiencies so that technical assistance can be provided to States, as needed. At the State level, the information is used to provide assurances to the Governor's office, and other interested parties, that WIC issues are being addressed.

Description of Respondents: State, local or tribal government.

Number of Respondents: 89.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4,144.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–22555 Filed 11–10–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension and Revision of a Currently Approved Information Collection; Disaster Set-Aside Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request approval for an extension and revision of the information collection package currently used in support of the FSA Farm Loan Programs (FLP).

DATES: Comments on this notice must be received on or before January 13, 2006 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523; Telephone (202) 690–4014; Electronic mail: *mike.cumpton@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Disaster Set-Aside Program.

OMB Control Number: 0560–0164.

Expiration Date of Approval: May 31, 2006.

Type of Request: Extension and revision of a Currently Approved Information Collection.

Abstract: The DSA program is designed to assist borrowers in financial distress that operated a farm or ranch in a political subdivision, typically a county that was declared or designated a disaster area. DSA allows eligible borrowers who are unable to make payments to quickly eliminate their immediate financial stress. Under this program, FSA Farm Loan Program (FLP) borrowers can receive immediate financial relief by moving one annual installment for each loan to the end of the loan term. FSA will collect information on the borrower's asset values, expenses and income.

While no changes to the program are proposed, FSA is reducing the projected annual hours of burden form 4,638 to 2,000 based on the average number of responses during the fiscal years 2003–2005.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average 2.5 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000.

Comments are invited on the following: (a) 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; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (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 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. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Michael Cumpton, Senior Loan Officer, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523.

Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC on November 3, 2005.

Teresa Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 05–22553 Filed 11–10–05; 8:45 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 18, 2005, 9:30 a.m., Commission Meeting.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda:

I. Approval of Agenda
II. Approval of Minutes of October 31, 2005 Meeting
III. Announcements
IV. Commission Briefing: Campus Anti-Semitism
- Introductory Remarks by Chairman
- Speakers' Presentations
- Questions by Commissioners and Staff Director

V. Staff Director's Report
VI. Management and Operations
- Posting September 30, 2005, Report to Senate Appropriations on Website
- Election Assistance Commission Appointments

VII. State Advisory Committees
- Criteria to be Considered When Voting on SAC Reports
- Length of SAC Terms
- Vote on SAC Reports: Arizona and New Mexico

VIII. Briefing Reports
- Stagnation of Black Middle Class Briefing Report
- Voting Rights Act Briefing Report

IX. Future Briefings
- Disparity Studies
- Native Hawaiian Government Reorganization Act
- Patriot Act
- Affirmative Action in U.S. Law Schools

Future Agenda Items

FOR FURTHER INFORMATION CONTACT: Terri Dickerson, Press and Communications (202) 376–8582.

Kenneth L. Marcus,

Staff Director, Acting General Counsel.

[FR Doc. 05–22573 Filed 11–8–05; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for

collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of the Finances Of Public-Employee Retirement Systems.

Form Number(s): F–10.

Agency Approval Number: 0607–0143.

Type of Request: Extension of a currently approved collection.

Burden: 300 hours.

Number of Respondents: 100.

Avg Hours Per Response: 45 minutes.

Needs and Uses: The Census Bureau requests continued OMB clearance of the Quarterly Survey of the Finances of Public Employee Retirement Systems. Over 2.2 trillion dollars in public-employee retirement system assets in the financial markets are controlled by a small number of large systems. The 2002 Census of Governments identified 2,670 state and local government administered public-employee retirement systems. The 100 largest systems, as measured by the system assets, account for about 90 percent of the total assets of all systems. This survey is used to collect financial data from these 100 systems for policy makers and economists to follow the changing characteristics of these funds.

This survey was initiated by the U.S. Census Bureau at the request of both the Council of Economic Advisors and the Federal Reserve Board. The most important information this survey provides is the quarterly change in composition of the securities holdings of the public employee retirement systems component of the economy. The Federal Reserve Board uses these data to track the public sector portion of the flow of funds accounts. The Bureau of Economic Analysis uses the quarterly retirement information on corporate stock holdings to estimate dividends received by state and local government retirement systems that, in turn, are used in preparing the national income and product accounts. Additionally, these data are a significant part of the information base needed to analyze investment trends and help in the formulation of governmental economic policies and investment decisions.

Affected Public: State, local or Tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: November 7, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–22510 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: U.S. Measurement Systems Biophotonics Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Review: Regular submission.

Burden Hours: 10.

Number of Respondents: 60.

Average Hours Per Response: 10 minutes.

Needs and Uses: NIST would like to determine the industry expectations for metrology needs of biophotonics applied to cell and tissue diagnostics aspects of health care over the next 10 years. To begin this process, NIST will sponsor a workshop entitled *Biophotonic Tools for Cell and Tissue Diagnostics.* This workshop will focus on diagnostic techniques involving the interaction between biological systems and photons. The survey will collect limited background information (e.g., professional training and interests).

Affected Public: Business or other for-profit organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–3123, or *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: November 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–22511 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Three-Year Generic Request for Customer Service-Related Data Collections.

Form Number(s): None.

OMB Approval Number: 0693–0031.

Type of Review: Regular submission.

Burden Hours: 3,022.

Number of Respondents: 12,000.

Average Hours Per Response: 2 minutes for a response card, and 2 hours for focus group participation. The average estimated response time is expected to be 30 minutes.

Needs and Uses: NIST will conduct surveys, focus groups, and other customer satisfaction/service data collections. The collected information is needed and will be used to determine the kind and the quality of products, services, and information our key customers want and expect, as well as their satisfaction with and awareness of existing products, services and information.

Affected Public: Business or other for profit organizations, not-for-profit institutions, and Federal, State, Local, or Tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance

Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5806, or *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: November 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–22512 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice and opportunity for public comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD OCTOBER 19, 2005 THROUGH NOVEMBER 4, 2005

Firm	Address	Date petition accepted	Product
Rudolph Instruments, Inc.	400 Morris Avenue, Suite 120, Denville, NJ 07834.	19-Oct-05	Optoelectronic analytical testing instruments.
Cisco Brothers, Corp.	1933 W. 60th Street, Los Angeles, GA 90047.	19-Oct-05	Upholstered couches and chairs.
AmeriStar Manufacturing Inc.	2600 9th Avenue, Mankato, MN 56001	25-Oct-05	Metal stamping and custom sheet metal fabrications.
Engineered Plastics Corp.	W 142 N9078 Fountain Boulevard, Menomonee Falls, WI 53051.	25-Oct-05	Injection molding of plastic components.
Ford Tool & Machining, Inc.	2205 Range Road, Rockford, IL 61111	25-Oct-05	Custom-made tooling for die casting machines.
The Glove Corp.	301 N. Harrison Street, Alexandria, IN 46001.	26-Oct-05	Lined gloves of leather and lined gloves of wool.
Alloy Hardfacing and Engineering Co., Inc	20425 Johnson Memorial Drive, Jordan, MN 55352.	26-Oct-05	Engineering and manufacturing of process equipment for the food related industries.
Rudolph Instruments, Inc.	400 Morris Avenue, Suite 120, Denville, NJ 07834.	26-Oct-05	Optoelectronic analytical testing instruments.
Contour Tool Works, Inc.	10 W. Waltz Drive, Wheeling, IL 60090	26-Oct-05	Engineering and manufacturing of molds, custom tooling and precision components from plastic injection molding.
Actaris U.S. Liquid Measurement, Inc.	1310 Emerald Road, Greenwood, SC 29646.	26-Oct-05	Manufacturer and distributor of flow and fluid meters and meter systems for all utility sectors.
SMW, Inc.	2606 Gregory Street, Savannah, GA 31404.	27-Oct-05	Manufacturer and distributor of wooden millwork, standard and running trim, custom entries, windows, pre-hung doors and cabinets.
Specialty Fastening Systems, Inc.	424 S. Baggett Street, Prairie Grove, AR 72753.	27-Oct-05	Manufacturer of nails.
Scott G. Williams, LLC	2111 General Arts Road, Conyers, GA 30012.	27-Oct-05	Manufacturer and distributor of inorganic fertilizer nutrients and trace additives of zinc, boron, sulfur and manganese.
Package Machinery Company, Inc.	380 Union Street, #58, West Springfield, MA 01089.	31-Oct-05	Wrapping machinery and injection molding machines.
In-Land Technologies Service, Inc.	700 B and H Industrial Court, Millstadt, IL 62260.	31-Oct-05	Manufacturer of industrial process control panels and industrial process control systems.
Shaffer Sportswear Mfg., Inc.	224 N. Washington Street, Neosho, MO 64850.	4-Nov-05	Sports uniforms.
Hearthstone Enterprises, Inc.	251 Industrial Park Drive, Boone, NC 28607.	4-Nov-05	Metal household furniture.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten calendar

days following publication of this notice. Please follow the procedures set forth in § 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 7, 2005.

Benjamin Erulkar,

Chief Counsel.

[FR Doc. 05–22528 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Economic Development Administration Reauthorization Act of 2004 Implementation; Comprehensive Review of Information Collections

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of Information Collections; Request for Public Comments.

SUMMARY: The Economic Development Administration (''EDA''), as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and other federal agencies with an opportunity to comment on proposed and current collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

EDA has published an interim final rule (70 FR 47002) revising its regulations to reflect the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (''PWEDA''), by the Economic Development Administration Reauthorization Act of 2004 (the ''2004 Act''). With limited exceptions, the interim final rule became effective on October 1, 2005. EDA is currently conducting a comprehensive review of its forms and other information collections to ensure that they correspond with the 2004 Act and with the interim final rule. EDA is soliciting public comments on the collections of information contained in this notice.

DATES: Written comments must be submitted on or before January 13, 2006.

ADDRESSES: Interested parties are invited to submit written comments to Diana H. Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, HCHB Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230. Written comments may also be submitted to the attention of Ms. Hynek via fax at (202) 482–4218 or via e-mail at *dhynek@doc.gov.* Please note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce (the ''Department'') is subject to extensive security screening.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Kenneth M. Kukovich, EDA PRA Liaison, Office of Management Services, Economic Development Administration, Department of Commerce, HCHB Room 7227, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4965; e-mail: *kkukovich@eda.doc.gov.* All of the EDA forms referenced in this notice are available on EDA's Internet Web site at *http://www.eda.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

EDA's mission is to lead the federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA will fulfill its mission by fostering entrepreneurship, innovation and productivity through investments in infrastructure development, capacity building and business development in order to attract private capital investments and higher-skill, higher-wage jobs to regions experiencing substantial and persistent economic distress. To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applicants for, and recipients of, EDA investment assistance.

On August 11, 2005, EDA published an interim final rule in the **Federal Register** (70 FR 47002) to reflect the amendments made to EDA's authorizing statute, PWEDA, by the 2004 Act. In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of its former regulations. On September 30, 2005, EDA published a notice in the **Federal Register** (70 FR 57124) to (i) delay the effective date of certain provisions in the interim final rule, and (ii) extend the public comment period for the interim final rule from October 11, 2005 to November 14, 2005. Except as otherwise provided by the September 30, 2005 notice, the interim final rule is effective as of October 1, 2005.

EDA is currently conducting a comprehensive review of its forms and other information collections to ensure that they correspond with the 2004 Act and the interim final rule. EDA is soliciting public comments on the collections of information contained in this notice.

EDA forms are available for downloading, completing and printing (portable document format (PDF)) on EDA's Internet Web site at *http://www.eda.gov.* Presently, EDA does not accept the electronic submission of completed forms or other information collections. These forms are not currently transaction-based, although EDA anticipates that the forms associated with the pre-application and application process will become transaction-based and able to be completed and filed on-line when EDA begins using the Department's proposed consolidated back-office on-line grants management system (''Grants On-Line'').

II. Collections of Information

A. Proposal and Application for Financial Assistance (OMB Control No. 0610–0094)

1. *Purpose:* These information collections are necessary to determine eligibility for investment assistance under EDA's authorizing statute and regulations, the quality of the proposed scope of work to address the pressing economic distress of a region, the merits of the activities for which investment assistance is requested, and the ability of the eligible applicant to carry out the proposed activities successfully. Eligible applicants first must submit a pre-application (ED–900P) and then be invited by EDA to submit a formal application (ED–900A).

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Numbers: ED–900P (Pre-Application for Federal Assistance); ED–900A (Application for Federal Assistance).

Type of Review: Regular submission.

Affected Public: State and local governments; Indian tribes; institutions of higher education; non-profit organizations; for-profit organizations; private individuals.

Estimated Number of Annual Responses: 1,900 (1,100 for Form ED–900P and 800 for Form ED–900A).

Estimated Time per Response: 9 hours for each Form ED–900P; 48.5 hours for each Form ED–900A.

Estimated Total Annual Burden Hours: 48,700 (9,900 for Forms ED–900P; 38,800 for Forms ED–900A).

Estimated Total Annual Cost: 0.

B. Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (OMB Control No. 0610–0091)

1. *Purpose:* Pursuant to Chapter 3 of Title II of the Trade Act of 1974, as amended, the Secretary of Commerce is responsible for administering adjustment assistance for trade-injured firms. The Secretary of Commerce has delegated this statutory authority and responsibilities to EDA. EDA administers the Trade Adjustment Assistance program to assist trade-injured U.S. manufacturing and producing firms to develop and implement strategies for competing in the global marketplace. EDA uses Form ED–840P to collect information from a petitioning firm to determine if it is eligible to apply for trade adjustment assistance.

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Number: ED–840P (Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance).

Type of Review: Regular submission.

Affected Public: Manufacturing or producing firms.

Estimated Number of Annual Responses: 200.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,600.

Estimated Total Annual Cost: 0.

C. Revolving Loan Fund (RLF) Grants (OMB Control No. 0610–0095)

1. *Purpose:* These information collections are necessary to ensure proper monitoring and compliance with EDA's statutory and regulatory requirements for RLFs.

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Numbers: ED–209A (RLF Annual Report); ED–209S (RLF Semi-Annual Report); ED–209I (Income and Expense Statement); RLF Standard Terms and Conditions; RLF Plan Guidelines.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 2,265 (1,058 for RLF Annual and Semi-Annual Reports; 596 for RLF Income and Expense Statement; 596 for RLF Standard Terms and Conditions; 15 for RLF Plan Guidelines).

Estimated Time per Response: 12 hours for the RLF Annual Report; 12 hours for the Semi-Annual Report; 2 hours for the Income and Expense Statement; 15 hours for the RLF Standard Terms and Conditions; 40 hours for the RLF Plan Guidelines).

Estimated Total Annual Burden Hours: 23,428 (12,696 for RLF Annual and Semi-Annual Reports; 1,192 for RLF Income and Expense Statement; 8,940 for RLF Standard Terms and Conditions; 600 for RLF Plan Guidelines).

Estimated Total Annual Cost: 0.

D. Comprehensive Economic Development Strategy Guidelines (OMB Control No. 0610–0093)

1. *Purpose:* A Comprehensive Economic Development Strategy (CEDS) is required to qualify for EDA investment assistance under its Public Works, Economic Adjustment, and most planning programs, and is a prerequisite for a region's designation by EDA as an Economic Development District. The *Comprehensive Economic Development Strategy Guidelines* set forth technical and procedural requirements for the development and implementation of a CEDS, including reporting requirements for Economic Development District and other EDA-funded planning organizations.

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 640.

Estimated Time per Response: 240 hours for initial CEDS for District Organizations and other EDA-funded planning organizations; 25 hours for CEDS for non-Districts and non-EDA-funded organizations; 50 hours for Annual CEDS Report; 75 hours for CEDS update.

Estimated Total Annual Burden Hours: 34,430.

Estimated Total Annual Cost: 0.

E. Requirements for Approved Construction Investments (OMB Control No. 0610–0096)

1. *Purpose:* The *Requirements for Approved Construction Investments* manual supplements the requirements that apply to EDA-funded construction projects. The information collected is used to monitor recipients' compliance with EDA's statutory and regulatory requirements and specific terms and conditions relating to individual awards. EDA also uses the information requested to analyze and evaluate program performance.

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 1,160.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 23,200.

Estimated Total Annual Cost: 0.

F. Request To Amend an Investment Award and Project Service Maps (OMB Control No. 0610–0102)

1. *Purpose:* A recipient must submit a written request to EDA to amend an investment award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of a grant (Section 302.7(a) of EDA's interim final rule). A project service map allows EDA to determine how effectively the project is addressing a region's economic development needs (Section 302.16(c) of EDA's interim final rule).

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian tribes; institutions of higher education; non-profit organizations; for-profit organizations; private individuals.

Estimated Number of Annual Responses: 55 (45 requests to amend an investment award (20 planning investments and 25 non-planning investments) and 10 project service maps).

Estimated Time per Response: 4 hours for amendments to planning investment awards; 16 hours for amendments to non-planning investment awards; 6 hours for project service maps.

Estimated Total Annual Burden Hours: 540 (80 hours for amendments to planning investments; 400 hours for amendments to non-planning investments; 60 hours for project service maps).

Estimated Total Annual Cost: 0.

G. Property Management (OMB Control No. 0610–0103)

1. *Purpose:* A recipient must request in writing EDA's approval to undertake an incidental use of property acquired or improved with EDA investment assistance. This collection of information allows EDA to determine

whether an incidental use of property acquired or improved with EDA investment assistance is appropriate. If a recipient of EDA investment assistance wishes for EDA to release its real property or tangible personal property interests before the expiration of the property's estimated useful life, the recipient must submit a written request to EDA. This collection of information allows EDA to determine whether to release its real property or tangible personal property interests.

2. *Method of Collection:* Paper Report.

3. *Data.*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 45 (25 requests for an incidental use of property and 20 requests for a release of EDA's property interests).

Estimated Time per Response: 6 hours for an incidental use request; 12 hours for a release of EDA's property interests.

Estimated Total Annual Burden Hours: 390 (150 hours for incidental use requests; 240 hours for releases of EDA's property interests).

Estimated Total Annual Cost: 0.

H. Designation of a Region as a Special Impact Area (OMB Control No. 0610–0104)

1. *Purpose:* Upon the written application of an eligible applicant, EDA may designate the region which the project will serve as a ''Special Impact Area'' if the applicant demonstrates that its proposed project will directly fulfill a pressing need and assist in preventing excessive unemployment (Section 214 of PWEDA and Part 310 of the interim final rule). EDA uses the information collected to determine whether to make a ''Special Impact Area'' designation.

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: State and local governments; Indian tribes; institutions of higher education; non-profit organizations.

Estimated Number of Annual Responses: 12.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden Hours: 120.

Estimated Total Annual Cost: 0.

I. Trade Adjustment Assistance Proposals (OMB Control No. 0610–0105)

1. *Purpose:* A certified firm works with the applicable Trade Adjustment Assistance Center (''TAAC'') to develop an adjustment proposal. The TAAC then submits the completed adjustment proposal to EDA for approval. If the adjustment proposal is approved, a certified firm may then request EDA-funded trade adjustment assistance through the TAAC.

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: Manufacturing or producing firms.

Estimated Number of Annual Responses: 180.

Estimated Time per Response: 120 hours.

Estimated Total Annual Burden Hours: 21,600.

Estimated Total Annual Cost: 0.

J. Request for Public Hearing (Section 315.9) (OMB Control No. 0610–0106)

1. *Purpose:* In order to have a public hearing, a person with a substantial interest in an accepted petition for trade adjustment assistance certification must submit a written request that follows the provisions set forth in Section 315.9. This information collection provides EDA with sufficient information to determine whether a public hearing is warranted.

2. *Method of Collection:* Paper Report.

3. *Data:*

Agency Form Number: None.

Type of Review: Regular submission.

Affected Public: Any person, organization or group found by EDA to have a substantial interest in the certification or non-certification by EDA of a petition for Trade Adjustment Assistance.

Estimated Number of Annual Responses: 1.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 1 hour.

Estimated Total Annual Cost: 0.

III. Request for Comments

Public comments are invited with respect to each of the collections of information listed above on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget's approval of these information collections and they also will become a matter of public record.

Dated: November 7, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–22513 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 05–00001.'' A summary of the application follows.

Summary of the Application

Applicant: Central America Poultry Export Quota, Inc. (CA–PEQ), 901 New York Avenue, NW., 3rd Floor, Washington, DC 20001–4413.

Contact: Kyd D. Brenner, Partner, DTB Associates, LLP. Telephone: (202) 661–7098.

Application No.: 05–00001.

Date Deemed Submitted: October 31, 2005.

Members (in addition to applicant): USA Poultry & Egg Export Council (''USAPEEC''), Stone Mountain, Georgia; Asociación Nacional de Avicultores de Guatemala (''ANAVI''), Guatemala, Guatemala; Asociación Nacional de Avicultores de El Salvador (''AVES''), La Libertad, El Salvador; and Asociación Nacional de Avicultores y Productores de Alimentos de Nicaragua (''ANAPA''), Managua, Nicaragua.

CA–PEQ seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Chicken leg quarters (or parts of chicken leg quarters, including legs or thighs), fresh, chilled or frozen, seasoned or unseasoned, marinated or not marinated, classifiable under HTS 0207.13.99, 0207.14.99 and 1602.32.00.

Export Markets

Chicken leg quarters for which awards will be made will be exported to El Salvador, Guatemala, Honduras and Nicaragua.

Export Trade Activities and Methods of Operation

CA–PEQ seeks certification for the following conduct:

1. The conduct of an open tender process for the award of shares of the tariff rate quota for chicken leg quarters in El Salvador, Guatemala, Honduras and Nicaragua;

2. The award of certificates for eligibility to enter chicken leg quarters into El Salvador, Guatemala, Honduras and Nicaragua subject to zero duties;

3. The collection and management of funds bid in the open tender process; and

4. The distribution of the proceeds of the open tender process to support the operation and administration of CA–PEQ and to fund promotional, educational, scientific and technical projects for the benefit of the poultry industries of the United States of America, El Salvador, Guatemala, Honduras and Nicaragua.

1. Purpose. CA–PEQ will manage on an open tender basis the tariff-rate quotas (TRQs) for poultry products granted by El Salvador, Guatemala, Honduras and Nicaragua to the United States under the terms of the United States-Central American Free Trade Agreement (''CAFTA'') or any amended or successor agreement providing for Central American poultry TRQs for the United States of America. CA–PEQ also will provide for distributions of the proceeds received from the tender process based on exports of poultry (''the TRQ System'') for the benefit of the poultry industries in El Salvador, Guatemala, Honduras, Nicaragua and the United States.

2. Implementation.

A. *Administrator.* CA–PEQ shall contract with a neutral third party Administrator who is not engaged in the production, sale, distribution or export of poultry or poultry products and who shall bear responsibility for administering the TRQ System, subject to general supervision and oversight by the Board of Directors of CA–PEQ.

B. *Membership.* CA–PEQ's initial members under this certificate are the USA Poultry and Egg Export Council (''USAPEEC'') on behalf of the U.S. poultry industry; by Asociación Nacional de Avicultores de Guatemala (''ANAVI'') on behalf of the Guatemalan poultry industry; by Asociación Nacional de Avicultores de El Salvador (''AVES'') on behalf of the Salvadoran poultry industry; and by Asociación Nacional de Avicultores y Productores de Alimentos de Nicaragua (''ANAPA'') on behalf of the Nicaraguan poultry industry.

C. *Open Tender Process.* CA–PEQ shall offer TRQ Certificates for duty-free shipments of chicken leg quarters to El Salvador, Guatemala, Honduras and Nicaragua solely and exclusively through an open tender process with certificates awarded to the highest bidders (''TRQ Certificates''). CA–PEQ shall hold tenders in accordance with tranches established in the relevant regulations of El Salvador, Guatemala, Honduras or Nicaragua, or in the absence of such, at least three times each year. The award of TRQ Certificates under the open tender process shall be determined solely by the Administrator in accordance with Section I without any participation by the Board of Directors.

D. *Persons or Entities Eligible to Bid.* Any person or entity incorporated or domiciled in the United States of America shall be eligible to bid in the open tender process.

E. *Notice.* The Administrator shall publish notice (''Notice'') of each open tender process to be held to award TRQ Certificates in the Journal of Commerce and, at the discretion of the Administrator, in other publications of general circulation within the U.S. poultry industry. The Notice will invite independent bids and will specify (i) the total amount (in metric tons) that will be allocated pursuant to the applicable tender; (ii) the shipment period for which the TRQ Certificates will be valid; and (iii) the date and time by which all bids must be received by the Administrator in order to be considered (the ''Bid Date''); and (iv) a minimum bid amount per ton, as established by the Board of Directors, to ensure the costs of administering the auction are recovered. The Notice normally will be published not later than 30 business days prior to the first day of the shipment period and will specify a Bid Date that is at least 10 business days after the date of publication of the Notice. The Notice will specify the format for bid submissions. Bids must be received by the Administrator not later than 5 p.m. EST on the Bid Date.

F. *Contents of Bid.* The bid shall be in a format established by the Administrator and shall state (i) the name, address, telephone and facsimile numbers, and e-mail address of the bidder; (ii) the quantity of poultry bid, in an amount that is a multiple of 25 metric tons; (iii) the bid price in U.S.

dollars per metric ton; and (iv) the total value of the bid. The bid form shall contain a provision, that must be signed by the bidder, agreeing that (i) any dispute that may arise relating to the bidding process or to the award to TRQ Certificates shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules; and (ii) judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

G. *Performance Security.* The bidder shall submit with each bid a performance bond, irrevocable letter of credit drawn on a U.S. bank, cashier's check, wire transfer or equivalent security, in a form approved and for the benefit of an account designated by the Administrator, in the amount of $50,000 or the total value of the bid, whichever is less. The bidder shall forfeit such performance security if the bidder fails to pay for any TRQ Certificates awarded within five (5) business days. The bidder may chose to apply the performance security to the price of any successful bid, or to retain the performance security for a subsequent open tender process. Promptly after the close of the open tender process, the Administrator shall return any unused or non-forfeited security to the bidder.

H. *Confidentiality of Bids.* The Administrator shall treat all bids and their contents as confidential. The Administrator shall disclose information about bids only to another neutral third party and only as necessary to ensure the effective operation of the TRQ System. However, after the issuance of all TRQ Certificates from an open tender process, the Administrator shall notify all bidders and shall disclose publicly (i) the total tonnage for which TRQ Certificates were awarded, and (ii) the lowest price per metric ton of all successful bids.

I. *Award of TRQ Certificates.* The Administrator shall award TRQ Certificates for the available tonnage to the bidders who have submitted the highest price conforming bids. If two or more bidders have submitted bids with identical prices, the Administrator shall divide the remaining available tonnage in proportion to the quantities of their bids, and offer each TRQ Certificates in the resulting tonnages. If any bidder declines all or part of the tonnage offered, the Administrator shall offer that tonnage first to the other tying bidders, and then to the next highest bidder.

J. *Payment for TRQ Certificates.* Promptly after being notified of a TRQ award and within the time specified in the Notice, the bidder shall pay the full amount of the bid, either by wire transfer or by certified check, to an account designated by the Administrator. If the bidder fails to make payment within five (5) days, the Administrator shall revoke the award and award the tonnage to the next highest bidder(s).

K. *Delivery of TRQ Certificates.* The Administrator shall establish an account for each successful bidder in the amount of tonnage available for TRQ Certificates. Upon request, the Administrator will issue TRQ Certificates in the tonnage designated by the bidder, consistent with the balance in that account. The TRQ Certificate shall state the delivery period for which it is valid.

L. *Transferability.* TRQ Certificates shall be freely transferable except that (i) any TRQ Certificate holder who intends to sell, transfer or assign any rights under that Certificate shall publish such intention on a Web site maintained by the Administrator at least three (3) business days prior to any sale, transfer or assignment; and (ii) any TRQ holder that sells, transfers or assigns its rights under a TRQ Certificate shall provide the Administrator with notice and a copy of the sale, transfer or assignment within three (3) business days.

M. *Deposit of Proceeds:* The Administrator shall cause all proceeds of the open tender process to be deposited in an interest-bearing account in a financial institution approved by the CA–PEQ Board of Directors.

N. *Disposition of Proceeds.* The proceeds of the open tender process shall be applied and distributed as follows:

i. The Administrator shall pay from tender proceeds, as they become available, all operating expenses of CA–PEQ, including legal, accounting and administrative costs of establishing and operating the TRQ System, as authorized by the Board of Directors.

ii. Of the proceeds remaining at the end of each year of operations after all costs described in (i) above have been paid:

1. Fifty percent (50%) shall be distributed to fund export market development, educational, scientific and technical projects to benefit the United States poultry industry. CA–PEQ shall accept proposals for the funding of projects approved by the Board of Directors of USAPEEC. The Administrator shall disburse funds to those projects approved for funding by the CA–PEQ Board of Directors.

2. Fifty percent (50%) shall be distributed to fund market development, educational, scientific and technical projects to benefit the poultry industries of El Salvador, Guatemala, Honduras and Nicaragua. CA–PEQ shall accept proposals for funding of projects approved by the Boards of Directors of ANAVI, AVES and ANAPA, as the case may be. The Administrator shall disburse funds to those projects approved for funding by the CA–PEQ Board of Directors.

O. *Arbitration of Disputes.* Any dispute, controversy or claim arising out of or relating to the TRQ System or the breach thereof, including inter alia, a Member's qualification for distribution, interpretation of documents, or of the distribution itself, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

P. *Confidential Information.* The Administrator shall maintain as confidential all export documentation or other business sensitive information submitted in connection with application for CA–PEQ membership, bidding in the open tender process or requests for distribution of proceeds, where such documents or information has been marked ''Confidential'' by the person making the submission. The Administrator shall disclose such information only to another neutral third party or authorized government official of signatories to the CAFTA, and only where necessary to ensure the effective operation of the TRQ System or where required by law (including appropriate disclosure in connection with the arbitration of a dispute).

Q. *Annual Reports.* CA–PEQ shall publish an annual report including a statement of its operating expenses and data on the distribution of proceeds, as reflected in the audited financial statement of the CA–PEQ TRQ System.

3. Cooperation with the U.S. Government and with the Governments of El Salvador, Guatemala, Honduras and Nicaragua. CA–PEQ will provide whatever information or consultations may be useful in order to ensure effective consultations between the government of the United States of America and the governments of El Salvador, Guatemala, Honduras and Nicaragua concerning the implementation and operation of the TRQ System. In particular, while maintaining the confidentiality of information submitted by bidders and Members, CA–PEQ will provide its annual report, regular reports following each tender held, reports on

distributions of tender proceeds, and any other information that might be requested by the U.S. Government. Directly or through the U.S. Government, CA–PEQ will endeavor to accommodate any information request from the governments of El Salvador, Guatemala, Honduras and Nicaragua, while protecting confidential information; and will consult with officials of those governments as appropriate.

Miscellaneous Implementing Provisions. CA–PEQ and/or its Members may (i) meet, discuss and provide for an administrative structure to implement the foregoing tariff-rate quota management system, assess its operations and discuss modifications as necessary to improve its workability; (ii) meet, exchange and discuss information regarding the structure and method for implementing the foregoing tariff-rate quota management system; (iii) meet, exchange and discuss the types of information needed regarding the bidding process and distribution of the bid proceeds, that are necessary for implementation of the system; (iv) meet, exchange and discuss information regarding U.S. and foreign government agreements, legislation and regulations affecting the tariff rate quota management system; and (v) otherwise meet, discuss and exchange information as necessary to implement the activities described above and take the necessary action to implement the foregoing tariff-rate quota management system.

Dated: November 7, 2005.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E5–6253 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board Meeting

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (''Board'') will hold a meeting to discuss topics related to the travel and tourism industry. The meeting will include discussion of the enhanced mandate of the Board, the international advertising and promotion campaign which seeks to encourage individuals to travel to the United States for the express purpose of engaging in tourism, and future issues and initiatives the Board may pursue. The meeting will be open to the public. Time will be permitted for public comment, which is limited to three minutes per speaker. To sign up for public comment, please contact J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, Washington, DC 20230 (Phone: 202–482–1124), *Marc.Chittum@mail.doc.gov,* no later than close of business, Friday, November 25, 2005.

The Board is mandated by Public Law 108–7, Section 210, was initially chartered in 2003, and was re-chartered on September 21, 2005, for a two-year period to end September 20, 2007.

DATE: December 1, 2005.

Time: To be determined.

ADDRESSES: Exact location to be determined, New Orleans, LA. This program will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than November 25, 2005, to J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–1124, *Marc.Chittum@mail.doc.gov.* Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–1124, *Marc.Chittum@mail.doc.gov.*

Dated: November 9, 2005.

J. Marc Chittum,

Designated Federal Officer, U.S. Travel and Tourism Board.

[FR Doc. 05–22617 Filed 11–9–05; 1:25 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration, North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On November 3, 2005, the binational panel issued its decision in the review of the final determination made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico Final Antidumping Duty Administrative Review, Secretariat File No. USA–MEX–98–1904–02. The binational panel affirmed in part and remanded in part to the International Trade Administration. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of the final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: The Panel remands this case to the Department as follows:

1. Reconsider whether, the evidence in the record supports the conclusion that, Type V cement sold as Type V and Type II cement was not sold in the ordinary course of trade, and provide an explanation recognizing the implications of the economic interrelationship of issues developed in the Seventh Review Remand Determination, the presence or absence of facts on the record regarding promotional quality, and the resulting interaction of all of the factors examined in the reconsideration;

2. If, upon reconsideration, a determination is made which alters the selection of sales for comparison purposes from that made in the original and first remand determination, consider the comparison issues raised by the CDC in conformance with the positions taken by the majority opinions in the Seventh Review Panel; and

3. Reconsider the calculation of the DIFMER allowance on the basis that any positive DIFMER allowance could be considered adverse to CEMEX, that the

calculation must be a ''reasonably accurate estimate'' of the actual rate, that the calculation must be made in a manner that reflects differences in physical characteristics, and that the result must, while providing a deterrent for non-compliance, not be punitive, and provide an adequate explanation of that calculation.

The Department's decision in the final results of the Sixth Administrative Review Remand Determination is, in all other respects, upheld.

The Department was directed to complete its redetermination with regard to remand issues within 45 days of the date of the opinion, or not later than December 19, 2005.

Dated: November 3, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 05–22503 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050305B]

Listing Endangered and Threatened Wildlife and Plants; Withdrawal of the Petition to List Eastern Oyster as Threatened or Endangered under the Endangered Species Act

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

ACTION: Notice of the withdrawal of a petition.

SUMMARY: NMFS announces that a request by Mr. Wolf-Dieter Busch (the petitioner) to withdraw his petition to list eastern oyster (*Crassostrea virginica*) has been received. NMFS has accepted this request and will cease the evaluation of the petition. However, in recognition of the considerable work that has been completed to date on the status review report and the value of this comprehensive resource to the management of this species, NMFS will ask the Biological Review Team (BRT) to complete the status review report.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Damon-Randall, NMFS, Northeast Regional Office, (978) 281–9300 x6535, or Marta Nammack, NMFS, HQ, (301) 713-1401 x180, or Jennifer Moore, NMFS Southeast Regional Office, (727) 824–5312.

SUPPLEMENTARY INFORMATION: On January 11, 2005, NMFS received the petition to list eastern oyster (*Crassostrea virginica*) as threatened or endangered under the ESA. On May 18, 2005, NMFS published a **Federal Register** notice (70 FR 28510) announcing that the petition and the information in our files indicated that the petitioned action may be warranted. Thus, NMFS initiated a review of the status of this species.

On Wednesday, October 19, 2005, NMFS received a letter from the petitioner, dated October 13, 2005, requesting the recall of the eastern oyster petition. In his letter, the petitioner indicated that his request to withdraw the petition is due to confusion over the petition process. He noted the significant concerns of some that the species may be listed as endangered, thereby creating severe restrictions and regulations for this resource. He also expressed concern that, given the timeline of the review, NMFS may not currently have enough information to determine if eastern oyster subspecies exist. He concluded that he hopes that NMFS will continue with the review as he considers the status review report to be a comprehensive resource which will be of great value in focusing restoration activities for this species.

NMFS has accepted this request and will consider the petition withdrawn, effective immediately. However, a considerable amount of effort has been expended to date by the eastern oyster BRT as it has already met twice and prepared approximately three quarters of the status review report. When complete, the status review report will be the most timely and comprehensive resource document for this species, and, as such, it will be a useful tool in guiding future management decisions. NMFS has, therefore, determined that the BRT will continue with the status review report and will complete the report as soon as practicable.

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

Dated: November 7, 2005.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–22552 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Public Key Infrastructure (PKI) Certificate Action Form.

Form Number(s): PTO–2042.

Agency Approval Number: 0651–0045.

Type of Request: Revision of a currently approved collection.

Burden: 1,383 hours annually.

Number of Respondents: 4,126 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to read the instructions and subscriber agreement, gather the necessary information, prepare the Certificate Action Form, and submit the completed request. The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to complete and electronically submit the information required for certificate self-recovery.

Needs and Uses: In support of the Government Paperwork Elimination Act and its own electronic filing initiatives, the USPTO uses Public Key Infrastructure (PKI) technology to support electronic commerce between the USPTO and its customers. In order to access secure online systems offered by the USPTO for transactions such as electronic filing of patent applications and retrieving confidential patent application information, customers must first obtain a digital certificate. The public uses this collection to request a new digital certificate, the revocation of a current certificate, or the recovery of a lost certificate. This collection includes the existing Certificate Action Form (PTO–2042), which is provided by the USPTO to ensure that customers submit the necessary information for processing certificate requests. The USPTO is adding a new electronic Certificate Self-Recovery Form to this collection to enable customers to recover their own lost certificates online.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

• E-mail: *Susan.Brown@uspto.gov.* Include ''0651–0045 copy request'' in the subject line of the message.

• Fax: 571–273–0112, marked to the attention of Susan Brown.

• Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 14, 2005 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: November 7, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer,Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–22529 Filed 11–10–05; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability of exclusive or partially exclusive licenses to practice worldwide under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Patent application Serial Number 60/642,771 entitled *''Fimbrial Adhesin as Vaccine Against Escherichia Coli''* filed on January 11, 2005. The present invention relates to the field of inducing an immune response against diarrheagenic bacteria including enterotoxigenic Escherichia coli using bacterial fimbriae components.

Patent application Serial Number 60/668,591 entitled *''Recombinant Antigens for the Detection of Coxiella Burnetii''* filed on April 6, 2005. The present invention relates to *Coxiella burnetii peptide antigens and recombinant DNA encoding the peptides.*

Patent application Serial Number 10/934,686, entitled *''Hospital and Clinic Emergency Preparedness Optimization System''* filed on September 3, 2004. The present invention relates to hospital and ambulatory clinic emergency management systems.

Patent application Serial Number 60/683,787 entitled *''Anti-Adhesin Based Passive Immunoprophylactic''* filed on May 24, 2005. The present invention relates to a pharmaceutical useful in conferring passive protection against diarrhea caused by enterotoxigenic *Esherichia coli.*

Patent application Serial Number 60/709,804 entitled *''A Method for the Evaluation of Dengue Virus Therapeutic Agents''* filed on August 22, 2005. The present invention relates to a method for evaluating the immunogenicity and efficacy of vaccine or drug formulations against dengue virus using a pig or porcine cells as models of infection and pathogenicity.

Patent application Serial Number 60/715,578 entitled *''Potts Reagent Alcohol-Solvent Extraction System''* filed on September 12, 2005. This invention relates to a method for decontaminating alcohol so that it may be recycled in histology and other laboratory settings.

Patent application serial Number, 60/722,086, entitled *''Immunogenic Capsule Composition for Use as a Vaccine Against Campylobacter Jejuni''* filed September 21, 2005. This invention relates to a pharmaceutical useful in conferring protection against diarrhea caused by *Campylobacter jejuni* and a method of administering said pharmaceutical.

Patent application Serial Number 60/627,811 entitled *''Diagnostic Assay for Rickettsial prowazekii Disease By Detection of Responsive Gene Expression''* filed on November 10, 2004. The present invention relates to a method of diagnosing epidemic typhus caused by the bacteria *Rickettsia prowazekii* by analysis of modulation of host gene expression. The method contemplates the use of micro-array technology for the detection and analysis of gene up or down regulation in response to bacterial infection.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit application to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone 301–319–7428 or e-mail at: *schlagelc@nmrc.navy.mil.*

Dated: October 31, 2005.

I.C. Le Moyne Jr.,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–22516 Filed 11–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's assigned rating officials; to make recommendations to authorizing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance bonuses and basic pay increases. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

ACKLEY, V. MR.
ADAMS, P. MS.
ALLES, R. BGEN
BACHMANN, M. RDML
BARBER III, A. MR.
BARNUM, H. MR.
BELAND, R. DR.
BETRO, T. MR.
BLAIR, A. MS.
BONWICH, S. MR.
BRANT, D. MR.
BRENNAN, A. MS.
BROTHERTON, A. MS.
BURNS, J. RADM
CALI, R. MR.
CIESLAK, R. MR.
COCKHRANE, E. MR.
COOK, C. MR.
COX, A. MR.
CRABTREE, T. MR.
CREEDON, C. MR.
CWALINA, B. MR.
DECKER, J. MS.
DECKER, M. MR.

DEITCHMAN, M. MR.
DEWITTE, C. MS.
DUNN, S. MR.
EASTER, S. MS.
EASTON, M. MR.
ERLAND, C. MS.
EVAN, G. MS.
FRANTZ, G. MR.
GALGANO, M. MR.
GARDNER, E. LTGEN
GIACCHI, C. A. MR.
GLAS, R. A. MR.
GODDARD, C. H. RDML
GODWIN, A. MS.
GOODHART, J. MR.
GRECO, R. THE HONORABLE
GREENING, M. MS.
GUARD, H. DR.
HALVORSEN, T. MR.
HAMILTON, C. RADM
HANSON, H. MR.
HAYNES, R. MR.
HERR, F. DR.
HILDEBRANDT, A. MR.
HOGUE, R. MR.
HOLCOMB, K. MS.
HONECKER, M. MR.
HOWARD, J. MR.
JAGGARD, M. MR.
JOHNSTON, K. DR.
JUNKER, B. DR.
KASKIN, J. MR.
KLIEN, J. MR.
KLEINTOP, M. MS.
KOWBA, W. RADM
KRAMLICH, R. LTGEN
KRASIK, S. MS.
LA RAIA, J. MR.
LAUX, T. MR.
LEACH, R. MR.
LEIKACH, K. MR.
LOCKLEAR, S. RADM
LOFTUS, J. MS.
LONG, L. A. MS.
LOWELL, P. MR.
LUCCHINO, C. MS.
MASCIARELLI, J. MR.
MCCORMACK, D. MR.
MCCOY, K. RDML
MCLAUGHLIN, P. MR.
MCNAIR, J. MR.
MEADOWS, L. MS.
MOHLER, M. MR.
MOLZAHN, W. MR.
MONTGOMERY, J. DR.
MOORE, S. MR.
MORA, A. THE HONORABLE
MUTH, C. MS.
NAVAS, W. THE HONORABLE
NEWTON, L. MS.
O'NEIL, S. MR.
ORNER, J. G. MR.
OSMAN, H. LTGEN
PENN, B. THE HONORABLE
PLUNKETT, B MR.
RAPS, S. MS.
REEVES, C. MR.
RHODES, M. MR.
ROARK, JR. J. MR.
RODRIGUEZ, W. RADM
RONDEAU, A. VADM
ROWE, M. MR.
RYZEWIC, W. MR.
SAUL, E. MR.
SCHUBERT, D. CAPT
SHEPARD, M. MS.
SLOCUM, W. MR.
SMITH, R. F. MR.
SOLHAN, G. MR.
SOMOROFF, A. DR.
SORENSEN, D. CAPT
TAMBURRINO, JR, P. MR.
TESCH, T. MR.
THACKRAH, J. MR.
THOMSEN, J. MR.
TIMME, W. RDML
TOLHURST, R. A. MR.
WARD, J. MR.
WENNERGREN, D. MR.
WHITEHEAD, S. MR.
WHITTEMORE, A. MS.
WIERINGA, J. RADM
WILLIAMS, G. MR.
WINOKUR, R. MR.
YOUNG, C. RADM
YOUNG, D. MR.
YOUNG, J. THE HONORABLE

FOR FURTHER INFORMATION CONTACT: Ms. Sheeler Kowalewski, Office of Civilian Human Resources, telephone 202–685–6693.

Dated: October 28, 2005.

I. C. Le Moyne Jr.,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–22515 Filed 11–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Talent Search Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.044A

Dates: Applications available: November 14, 2005.

Deadline for Transmittal of Applications: January 6, 2006.

Deadline for Intergovernmental Review: March 7, 2006.

Eligible Applicants: Institutions of higher education; public or private agencies or organizations; combinations of institutions, agencies, and organizations; and secondary schools under exceptional circumstances, such as if there is no institution, agency, or organization capable of carrying out a Talent Search (TS) project in the proposed target area.

Estimated Available Funds: The Administration's budget request for FY 2006 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process if Congress should decide to appropriate funds for this program.

Estimated Range of Awards: $220,000–$3,600,000.

Estimated Average Size of Awards: $309,000.

Maximum Award: We will not fund any application at an amount exceeding the maximum amounts specified below for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified below, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

- For an applicant who is not currently receiving a TS Program grant, the maximum award amount is $220,000 for a project that will serve a minimum of 600 eligible participants.
- For an applicant who is currently receiving a TS Program grant the maximum award is—the greater of (a) $220,000 or (b) an amount equal to 103 percent of the applicant's prior grant award amount for FY 2005.

Estimated Number of Awards: 469.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the TS Program is to identify qualified youths with potential for education at the postsecondary level and encourage them to complete secondary school and undertake a program of postsecondary education. TS projects also publicize the availability of student financial assistance for persons who seek to pursue postsecondary education and encourage persons who have not completed programs at the secondary or postsecondary level to reenter these programs.

Program Authority: 20 U.S.C. 1070a–12.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The TS Program regulations in 34 CFR part 643.

Note: The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2006 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $220,000—$3,600,000.

Estimated Average Size of Awards: $309,000.

Maximum Award: We will not fund any application at an amount exceeding the maximum amounts specified below for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified below, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

- For an applicant who is not currently receiving a TS Program grant, the maximum award amount is $220,000 for a project that will serve a minimum of 600 eligible participants.
- For an applicant who is currently receiving a TS Program grant the maximum award is—the greater of (a) $220,000 or (b) an amount equal to 103 percent of the applicant's grant award amount for FY 2005.

Estimated Number of Awards: 469.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education; public or private agencies or organizations; combinations of institutions, agencies, and organizations; and secondary schools in exceptional circumstances, such as if there is no institution, agency, or organization capable of carrying out a TS project in the proposed target area.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* An applicant may submit more than one application, if each separate application describes a project that will serve different target schools and service areas. A secondary school applicant must submit a certification that there is no other eligible entity in the proposed target area that is capable of carrying out a TS project.

IV. Application and Submission Information

1. *Address to Request Application Package:* Loretta Brown or Craig Pooler, U.S. Department of Education, 1990 K Street, NW., Suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by e-mail: *TRIO@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting either of the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the section of the narrative that addresses the selection criteria to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.
- Use size 12-point font.

The page limit does not apply to Part I, the application for federal assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices, these items will be counted as part of the Program Narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: November 14, 2005.

Deadline for Transmittal of Applications: January 6, 2006.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site *http://www.grants.gov.* For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

Deadline for Intergovernmental Review: March 7, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the TS Program—CFDA Number 84.044A must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Talent Search Program at: *http://www.grants.gov.* You

must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*
- To submit your application via Grants.gov, you must complete all the steps in the Grants.gov registration process (see *http://www.grants.gov/GetStarted*) and provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact either of the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a federal holiday, the next business day following the federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Geraldine Smith, U.S. Department of Education, 1990 K Street, NW., Room 7000, Washington, DC 20006–8510. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for any exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the original and three copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.044A), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.044A),

7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and three copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.044A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (SF 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program competition are in 34 CFR 643.21 and are discussed in greater detail in the application package.

Note: Under the ''Objectives'' selection criterion, 34 CFR 643.21(b), applicants must address both outcome and process objectives that are related to each of the purposes of the TS program in 34 CFR 643.1. The application package for this program specifies the following five objectives related to the purposes of the TS program: Increasing secondary school promotion, increasing secondary school graduation, increasing applications for student financial aid, increasing applications for postsecondary education admissions, and increasing postsecondary education enrollment. The Talent Search Program Profile page in the application package details more specific information that applicants must submit regarding these five objectives. Applicants may, but are not required to, develop additional objectives for their project.

2. *Review and Selection Process:* The Secretary will select an application for funding in rank-order, based on the application's total score for the selection criteria and prior experience, pursuant to 34 CFR 643.20 through 643.22. If there are insufficient funds for two or more applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographical areas and eligible populations that have been underserved by the TS Program.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report including financial information as directed by the Secretary. If you receive a multi-year award, you must provide an annual performance report that provides the most current performance and financial expenditures information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The success of the TS Program is measured by the TS Program participants' success in increasing secondary school promotions, secondary school graduations, applications for student financial aid, applications for postsecondary education admissions, and postsecondary education enrollment. All TS Program grantees will be required to submit an annual performance report.

VII. Agency Contacts

For Further Information Contact: Loretta Brown or Craig Pooler, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by e-mail: *TRIO@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: November 8, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–22554 Filed 11–10–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order Revoking Market-Based Rate Authority, Establishing Hearing and Settlement Judge Procedures, and Terminating Section 206 Proceeding

Issued November 3, 2005.

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

In the matter of: ER98–3809–000, ER97–2867–000, ER98–4685–000, ER00–105–000, ER97–512–000, ER00–861–000, ER97–2132–000, ER01–2355–000, ER00–679–000, ER98–701–000, ER01–1701–000, ER00–2945–000, ER01–2138–000, ER90–225–000, ER99–964–000, ER97–1968–000, ER05–737–000, ER98–1790–000, ER96–2624–000, ER01–2071–000, ER94–1161–000, ER94–1099–000, ER99–3098–000, ER98–2020–000, ER98–2918–000, ER96–358–000, ER01–2221–000, ER96–138–000, ER99–254–000, ER98–3233–000, ER01–666–000, ER97–382–000, ER96–918–000, ER00–1258–000, ER97–3580–000, ER02–687–000, ER96–1933–000, ER01–1078–000, ER01–2405–000, ER98–4334–000, ER01–3023–000, ER01–2129–000, ER96–1819–000, ER95–802–000, ER98–3478–000, ER00–1519–000, ER01–688–000, ER00–2306–000, ER95–784–000, ER95–295–000, ER95–232–000, ER03–1259–000, ER94–1672–000, ER02–30–000, ER01–1507–000, ER00–1781–000, ER99–801–000, ER99–1156–000, ER95–78–000, ER01–2509–000, ER02–1238–000, ER94–1593–000, ER95–192–000, ER01–352–000, ER98–2618–000, ER99–2537–000, ER97–2681–000, ER96–2892–000, ER98–1915–000, ER94–152–000, ER97–1716–000, ER01–904–000, ER98–622–000, ER02–41–000, ER98–3048–000, ER98–1125–000, ER01–1479–000, ER02–845–000, ER97–181–000, ER99–2883–000, ER95–379–000, ER03–372–000, ER01–1821–000, ER99–3275–000, ER96–2303–000, ER97–3187–000, ER96–1–000, ER01–2463–000, ER95–968–000, ER99–1876–000, ER96–404–018 ER02–809–000, ER96–1516–000, ER01–2217–002 ER96–2524–000, ER01–2694–000, ER01–373–002, ER00–494–000, ER98–1055–000, ER01–3148–000, ER01–2234–000, ER04–957–000, ER96–105–000, ER01–1709–000, ER02–1046–000, ER98–537–000, EL05–111–000; 3E Technologies, Inc., AC Power Corporation, ACN Power, Inc., AI Energy, Inc., A'Lones Group, Inc., Alrus Consulting, LLC, Atlantic Energy Technologies, I Inc., Beacon Generating, LLC, Black River Power, LLC, California Polar Power Broker, L.L.C., Callaway Golf Company, Candela Energy Corporation, Capital Energy, Inc., Chicago Electric Trading, L.L.C., Cielo Power Market, L.P., Colonial Energy, Inc., Commerce Energy Inc., Competisys LLC, Cumberland Power, Inc., Desert Power, L.P., Direct Electric Inc., Eclipse Energy, Inc., EGC 1999 Holding Company, L.P., Energy Clearinghouse Corp., Energy PM, Inc., Energy Resource Management Corp., Energy Transfer–Hanover Ventures, LP, EnergyOnline, Inc., ENMAR Corporation, Environmental Resources Trust, Inc., EWO Marketing, L.P., Exact Power Co., Inc., Federal Energy Sales, Inc., First Electric Cooperative Corporation, First Power, LLC, FMF Energy, Inc., Gelber Group, Inc., George Colliers, Inc., GNA Energy, LLC, Golden Valley Power Company, Hinson Power Company, LLC, Holt Company of Ohio, ICC Energy Corporation, IEP Power Marketing, LLC, INFINERGY Services, LLC, InPower Marketing Corporation, IPP Energy LLC, It's Electric &Gas, L.L.C., J. Anthony & Associates Ltd, Kaztex Energy Ventures, Inc., Kimball Power Company, Kloco Corporation, Lambda Energy Marketing Company, Longhorn Power, LP, Lumberton Power, LLC, Marquette Energy, LLC, Metro Energy Group, LLC, Michigan Gas Exchange, L.L.C., Mid–American Resources, Inc., Morrow Power, LLC, MPC Generating, LLC, National Power Exchange Corp., National Power Management Company, Natural Gas Trading Corporation, Nautilus Energy Company, Navitas, Inc., New Millennium Energy Corp., NGTS Energy Services, Nine Energy Services, LLC, North American Energy Conservation, Inc., North Atlantic Utilities Inc., North Carolina Power Holdings, LLC, North Star Power Marketing, LLC, North Western Energy Marketing, LLC, Northeast Electricity Inc., Northeast Empire L.P. #2, Northwest Regional Power, LLC, Northwestern Wind Power, LLC, Oceanside Energy, Inc., Old Mill Power Company, Peak Energy, Inc., Peak Power Generating Company, Power Dynamics, Inc., Power Management Co., LLC, Power Providers Inc., Power Systems Group, Inc., Powertec International, LLC, Pro–Energy Development LLC, Progas Power Inc., PS Energy Group, Inc., Questar Energy Trading Company, Renewable Energy Resources LLC, SEMCOR Energy, Sunrise Power Company, Symmetry Device Research, Inc., The Energy Group of America, Inc., Tiger Natural Gas, Inc., TransAlta Centralia Generation LLC, TransAlta Energy Marketing (US) Inc., TransAlta Energy Marketing Corp. (US), Travis Energy & Environment, Inc., TXU Electric Delivery Company, U.S. Power & Light, Inc., VIASYN, Inc., Walton County Power, LLC, Western Energy Marketers, Inc.

1. In this order, the Commission revokes the market-based rate authority of the companies that failed to comply with the Commission's May 31, 2005 Order [1] and the conditions under which the Commission granted them market-based rate authority. In addition, the Commission will revoke the market-based rate authority of two entities who responded to the May 31 Order, but did so in a patently deficient manner. The market-based rate tariffs of these entities are terminated effective on the date of issuance of this order. Furthermore, we will direct these entities to inform the Commission whether they have made any sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, and, for those entities that have made such sales or that fail to respond, we will establish hearing and settlement judge procedures to determine whether and in what amount these entities should be required to disgorge their profits from these sales. In addition, this order accepts filings notifying the Commission that certain entities were inadvertently included in the May 31 Order.[2]

Background

2. As a condition of receiving market-based rate authority, the Commission requires market-based rate sellers to submit an updated market power analysis every three years [3] to allow the Commission to evaluate the reasonableness of their charges and to provide for ongoing monitoring of their ability to exercise market power. In the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price.

3. In the May 31 Order, the Commission announced its policy with respect to entities that have failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated or revised market power analysis. In that order, the Commission directed these market-based rate sellers to file their updated or revised market analyses within 60 days from the issuance of that order or to provide satisfactory support for why they should not be required to do so. The Commission also established a refund effective date under section 206 of the Federal Power Act (FPA) for the protection of customers.[4]

4. On June 8, 2005, in response to the May 31 Order, Questar Energy Trading Company (Questar) filed only a statement that there has been no change in the facts relied upon by the Commission when it initially granted Questar market-base rate authority.

5. On June 28, 2005, in response to the May 31 Order, Tiger Natural Gas, Inc. (Tiger) refiled its initial application for market-based rates, which it originally filed November 6, 2000.

[1] *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order).

[2] The Commission has also received a number of updated and revised market power analyses in response to the May 31 Order, which will be addressed in a separate order.

[3] *See, e.g., Western Resources, Inc.*, 94 FERC ¶ 61,050 at 61,247 (2001); *Entergy Services, Inc.*, 58 FERC ¶ 61,234 at 61,760 (1992); *PSI Energy, Inc.*, 51 FERC ¶ 61,367 at 62,209 (1990).

[4] 16 U.S.C. 824e (2000).

Discussion

Revocation of Market-Based Rate Authority and Termination of Market-Based Rate Tariffs

6. The entities listed in Appendix A of this order have made no filing in response to the Commission's May 31 Order. In the May 31 Order, we stated that we would revoke the market-based rate authority and terminate the market-based rate tariff of any market-based rate seller that failed to file the required updated or revised market power analysis. Accordingly, we hereby revoke the market-based rate authority of the entities identified in Appendix A of this order and terminate their market-based rate tariffs, effective on the date of issuance of this order.

7. We find that the filings submitted by Questar and Tiger do not satisfy the Commission's directive in the May 31 Order. We note that Questar did not submit any market power analysis whatsoever and instead states that there have been no changes since its market-based rate tariff was accepted on January 29, 1996. Tiger simply refiled the same initial application for market-based rate authorization that it submitted five years ago. The Commission requires that an updated market power analysis contain current information. The submissions of Questar and Tiger are patently deficient and thus fail to comply with the clear directive in the May 31 Order. Accordingly, we revoke Questar's and Tiger's market-based rate authority and terminate their market-based rate tariffs, effective on the date of issuance of this order.

8. Furthermore, any waivers and authorizations previously granted in connection with the market-based rate authority of the entities listed in Appendix A, Questar, and Tiger are no longer applicable.

Disgorgement of Profits

9. As discussed above, the May 31 Order established a refund effective date in this proceeding. If any of the entities listed in Appendix A, Questar, or Tiger made sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, they may be required to disgorge their profits from those sales. Accordingly, we direct the entities listed in Appendix A, Questar, and Tiger to inform the Commission within five days of the issuance of this order whether they have made such sales at market-based rates during this period. For the entities that inform the Commission that they have not made any such sales during this period, the Commission will terminate the section 206 proceeding with respect to them and will not impose the remedy of disgorgement.

10. For any entities that inform the Commission that they have made such sales or that fail to respond, we will establish hearing and settlement judge procedures to determine whether and in what amount these entities should be required to disgorge their profits from these sales. These entities have failed to comply with the conditions of their market-based rate authorizations, namely, the obligation to file an updated market power analysis when requested to do so by the Commission. Their failure to comply with this express obligation impeded the Commission's ability to ensure that utilities do not acquire market power and that rates remain just and reasonable. Under these circumstances, we find that disgorgement of the profits earned on transactions during this period is justified.

11. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[5] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[6] The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

Entities Inadvertently Included in May 31 Order

12. The inclusion in the May 31 Order of the entities listed in Appendix B of this order was inadvertent, and we hereby terminate the section 206 proceeding with regard to them.

The Commission orders:

(A) The market-based rate authority of the entities listed in Appendix A, Questar, and Tiger is hereby revoked. The market-based rate tariffs of those entities are terminated effective on the date of issuance of this order and any waivers and authorizations previously granted in connection with the market-based rate authority of these entities are no longer applicable.

(B) The entities listed in Appendix A, Questar, and Tiger are directed to inform the Commission within five days of the issuance of this order whether they have made any sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, as discussed above.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held in Docket No. EL05–111 to determine whether and in what amount the entities listed in Appendix A, Questar, and Tiger should be required to disgorge any profits from sales made pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 CFR 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type

[5] 18 CFR 385.603 (2005).

[6] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's Web site contains a list of Commission judges and a summary of their background and experience (*http://www.ferc.gov*—click on Office of Administrative Law Judges).

evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The section 206 proceeding instituted in Docket No. EL05–111–000 is hereby terminated with regard to the entities listed in Appendix B of this order.

(H) The Secretary is directed to publish a copy of this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

Appendix A

The following market-based rate sellers have failed to submit a response to the Commission's May 31 Order. As discussed above, we revoke the following entities' authority to sell power at market-based rates and terminate their electric market-based rate tariffs: 3E Technologies, Inc., AC Power Corporation, ACN Power, Inc., AI Energy, Inc., A'Lones Group, Inc., Alrus Consulting, LLC, Astra Power, LLC, Atlantic Energy Technologies, Inc., Beacon Generating, LLC, Black River Power, LLC, California Polar Power Broker, L.L.C., Callaway Golf Company, Candela Energy Corporation, Capital Energy, Inc., Chicago Electric Trading, L.L.C., Cielo Power Market, L.P., Colonial Energy, Inc., Competisys LLC, Cumberland Power, Inc., Direct Electric Inc., Eclipse Energy, Inc., EGC 1999 Holding Company, L.P., Energy Clearinghouse Corp., Energy PM, Inc., Energy Resource Management Corp., Energy Transfer-Hanover Ventures, LP, EnergyOnline, Inc., ENMAR Corporation, Environmental Resources Trust, Inc., Exact Power Co., Inc., Federal Energy Sales, Inc., First Electric Cooperative Corporation, First Power, LLC, FMF Energy, Inc., Gelber Group, Inc., George Colliers, Inc., GNA Energy, LLC, Golden Valley Power Company, Hinson Power Company, LLC, Holt Company of Ohio, ICC Energy Corporation, IEP Power Marketing, LLC, INFINERGY Services, LLC, InPower Marketing Corporation, IPP Energy LLC, It's Electric & Gas, L.L.C., J. Anthony & Associates Ltd, Kaztex Energy Ventures, Inc., Kimball Power Company, Kloco Corporation, Lambda Energy Marketing Company, Longhorn Power, LP, Lumberton Power, LLC, Marquette Energy, LLC, Metro Energy Group, LLC, Michigan Gas Exchange, L.L.C., Mid-American Resources, Inc., Morrow Power, LLC, National Power Exchange Corp., National Power Management Company, Natural Gas Trading Corporation, Nautilus Energy Company, Navitas, Inc., New Millennium Energy Corp., NGTS Energy Services, Nine Energy Services, LLC, North American Energy Conservation, Inc., North Atlantic Utilities Inc., North Carolina Power Holdings, LLC, North Star Power Marketing, LLC, Northeast Electricity Inc., Northeast Empire L.P. #2, Northwest Regional Power, LLC, Northwestern Wind Power, LLC, Oceanside Energy, Inc., Old Mill Power Company, Peak Energy, Inc., Peak Power Generating Company, Power Dynamics, Inc., Power Management Co., LLC, Power Providers Inc., Power Systems Group, Inc., Powertec International, LLC, Pro-Energy Development LLC, Progas Power Inc., PS Energy Group, Inc., Renewable Energy Resources LLC, SEMCOR Energy, Symmetry Device Research, Inc., The Energy Group of America, Inc., Travis Energy & Environment, Inc., U.S. Power & Light, Inc., VIASYN, Inc., and Western Energy Marketers, Inc.

Appendix B

The following market-based rate sellers were inadvertently included on the May 31 Order. We therefore terminate the section 206 proceeding instituted in Docket No. EL05–111–000 with regard to these entities: Commerce Energy, Inc., Desert Power, L.P., EWO Marketing, L.P., MPC Generating, LLC, NorthWestern Energy Marketing, L.L.C., Sunrise Power Company, LLC, TransAlta Centralia Generation LLC, TransAlta Energy Marketing (US) Inc., TransAlta Energy Marketing Corp. (US), TXU Electric Delivery Company, and Walton County Power, LLC.

[FR Doc. E5–6241 Filed 11–10–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7996–4]

Public Water System Supervision Program Revisions for the State of Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Michigan is revising its approved Public Water System Supervision Program. Michigan has: revised its administrative penalty authority for public water systems; adopted the Consumer Confidence Report Rule, which requires annual drinking water quality reports from all community water systems; adopted the Interim Enhanced Surface Water Treatment Rule, which will help improve control of microbial pathogens in drinking water; adopted the Stage 1 Disinfectants and Disinfection Byproducts Rule, which will set new requirements to limit the formation of chemical disinfection byproducts in drinking water; and adopted the Public Notification Rule, which revises the general public notification regulations (sets requirements for public water systems to follow regarding the form, manner, frequency, and content of a public notice).

EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions. This approval action does not extend to public water systems (PWSs) in Indian Country, as that term is defined in 18 U.S.C. 1151. By approving these rules, EPA does not intend to affect the rights of federally recognized Indian tribes in Michigan, nor does it intend to limit existing rights of the State of Michigan.

Any interested party may request a public hearing. A request for a public hearing must be submitted by December 14, 2005, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by December 14, 2005, EPA Region 5 will hold a public hearing.

If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 14, 2005. Any request for a public hearing shall include the following

information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices: Michigan Department of Environmental Quality, Water Bureau, Constitution Hall, 525 W. Allegan Street, 2nd Floor, PO Box 30273, Lansing, Michigan 48909–7773, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, and the United States Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604, between the hours of 9 a.m. and 4:30 p.m., Monday through Friday,

FOR FURTHER INFORMATION CONTACT: Jennifer Kurtz Crooks, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 886–0244, or at *crooks.jennifer@epa.gov.*

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 3006–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: October 28, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–22548 Filed 11–10–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or email to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, without revision of the following report:

Report title: The Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing)

Agency form number: Reg M

OMB control number: 7100–0202

Frequency: on occasion

Reporters: consumer lessors

Annual reporting hours: disclosures, 3,509 hours; and advertising, 25 hours

Estimated average hours per response: disclosures, 6.5 minutes; and advertising, 25 minutes

Number of respondents: 270

General description of report: This information collection is mandatory sections 105(a) and 187 of TILA (15 U.S.C. §§ 1604(a) and 1667(f) is not given confidential treatment.

Abstract: The Consumer Leasing Act and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised.

Board of Governors of the Federal Reserve System, November 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6256 Filed 11–10–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 29, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert J. Barmann, Jr., Platte City, Missouri; and James L. Baber, Weston, Missouri, as individuals; and Robert J. Barmann, Jr., Platte City, Missouri; James L. Baber, Weston, Missouri, and Robert M. McGinness, Platte City, Missouri, as a group acting in concert to acquire voting shares of Wells Bancshares, and thereby indirectly acquire voting shares of Wells Bank of Platte City, both of Platte City, Missouri.

Board of Governors of the Federal Reserve System, November 7, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6242 Filed 11–10–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First State Associates, Inc., Hawarden, Iowa; to acquire 50 percent of the voting shares of The Hawarden Banking Company, and thereby indirectly acquire voting shares of First State Bank, both of Hawarden, Iowa.

2. Indiana Bank Corp., Terre Haute, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Dana, Dana, Indiana.

Board of Governors of the Federal Reserve System, November 7, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6243 Filed 11–10–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Clay County State Bancshares, Inc., Louisville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Clay County State Bank, Louisville, Illinois.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Western State Bancshares, Inc., Waterloo, Nebraska; to become a bank holding company by acquiring up to 100 percent of the voting shares of Western State Bank, Waterloo, Nebraska.

Board of Governors of the Federal Reserve System, November 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6254 Filed 11–10–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. National Penn Bancshares, Inc., Boyertown, Pennsylvania; to acquire Nittany Financial Corp., State College, Pennsylvania, and thereby indirectly acquire voting shares of Nittany Bank, State College, Pennsylvania, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6255 Filed 11–10–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Office of Citizen Services and Communications; Information Collection; Market Research Collection

AGENCY: Office of Citizen Services and Communications, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Market Research for the Office of Citizen Services and Communications. The clearance currently expires on April 30, 2006.

This information collection will be used to determine the utility and ease of use of GSA's Web site, *http://www.gsa.gov.* The respondents include individuals and representatives from businesses currently holding GSA contracts.

Public comments are particularly invited on: Whether this collection of information is necessary 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.

DATES: Submit comments on or before: January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Jocelyn Johnson, Office of Citizen Services and Communications, at telephone (202) 208–0043, or via e-mail to *jocelyn.johnson@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget (OMB) to review and approve information collection 3090–0277 concerning Market Research Collection for the Office of Citizen Services and Communications. The purpose of this information collection is to inform GSA on how to best provide service and relevance to the American public via GSA's Web site *http://www.gsa.gov.* The information collected from an online survey, focus groups, and Web site usability testing will be used to refine the *http://www.gsa.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other for-profit groups.

B. Annual Reporting Burden

Respondents: 190.
Responses Per Respondent: 1.
Hours Per Response: 72.6 minutes.
Total Burden Hours: 230.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

Dated: October 25, 2005.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 05–22495 Filed 11–10–05; 8:45 am]

BILLING CODE 6820–CX–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 60–day notice]

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance.

Title of Information Collection: Critical Infrastructure Data System (CIDS).

Form/OMB No.: OS–0990–New.

Use: Via an online data system, the Health and Human Service will collect, compile, and analyze information from a variety of health services' facilities regarding working facilities, needed critical assets, and diseases surveyed. No current national data system exists.

Frequency: Recording, reporting, daily.

Affected Public: Federal, State, local, or tribal governments, business or other for profit, not for profit institutions.

Annual Number of Respondents: 3,385.

Total Annual Responses: 1,235,525.

Average Burden Per Response: 18 hours.

Total Annual Hours: 10,296.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60-days of this notice directly to the OS Paperwork Clearance Officer designated at the following address:

Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Fax Number (202) 690–8715, Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: November 2, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–22550 Filed 11–10–05; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Potential Partners to Participate in Programs of the Office of the President's Council on Physical Fitness and Sports During 2006 50th Anniversary Celebration

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of the President's Council on Physical Fitness and Sports.

ACTION: Notice.

SUMMARY: The Office of the President's Council on Physical Fitness and Sports (PCPFS) is soliciting proposals for the establishment of partnerships with non-Federal public and private sector organizations, with the goal of developing, implementing, promoting, and evaluating physical activity, fitness, and sports participation activities and initiatives. These partnerships are particularly targeted at calendar year 2006, which marks the 50th anniversary of the PCPFS. This Partnership Initiative is not a grant or contract award program. It is intended to provide opportunities for the Office of the PCPFS and non-Federal public and private sector organizations to work together both to enhance and integrate existing partnerships and also to create new physical activity, fitness, and sports initiatives at the national, state, and local levels to promote better health and fitness for all Americans in a synergistic and collaborative environment. These partnerships will be voluntary, and each partner will be responsible for supporting its own activities. Potential co-sponsors must have a demonstrated interest in physical activity, fitness, and/or sports activities and be willing to participate substantively in the co-sponsored activity.

DATES: This announcement is open until June 1, 2006, and may be renewed as needed through subsequent notices. Comments expressing or confirming an interest in potential partnerships will be most useful if received within two months of the publication of this notice, but will continue to be accepted for consideration throughout the open period.

ADDRESSES: Expressions of interest, comments, or questions may be sent via e-mail, fax, or regular mail to: Melissa Johnson at *mjohnson@osophs.dhhs.gov,* Fax: 202–690–5211, President's Council on Physical Fitness and Sports—Partnerships, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 738H, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Melissa Johnson at Ph: 202–690–5187, e-mail: *mjohnson@osophs.dhhs.gov* or Christine Spain at Ph: 202–690–5148, e-mail: *cspain@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established by the President of the United States in 1956 and today operates under Executive Order 13265, continued by Executive Order 13385, in accordance with the Federal Advisory Committee Act. The purposes of the PCPFS are (1) to provide advice and recommendations to the President through the HHS Secretary concerning actions and initiatives to develop, implement, and coordinate national programs for physical activity, fitness, and sports; (2) to inform the general public about the importance of regular physical activity and the link between physical activity and good health.

The PCPFS serves as a catalyst to promote physical activity, fitness, and sports for Americans of all ages, backgrounds, and abilities. Since its founding in 1956, the Office of the PCPFS has sustained a productive history of relationships with both public and private sector sponsors to create and maintain opportunities for Americans to participate in physical activity, fitness, and sports initiatives on the national, state, and local levels. Co-sponsorships established for observance of the 50th anniversary of the PCPFS should raise awareness of following: (1) The physical benefits of a fit and active lifestyle; (2) model programs promoting and providing physical activity in a variety of venues, suitable for replication; (3) opportunities to work collaboratively at the grassroots level to promote physical activity, fitness, and sports; (4) gaps and barriers preventing active and functional living and aging.

The Secretary has delegated to the Office of the PCPFS certain authorities under the Public Health Service Act (PHS Act) including, but not limited to, sections 1704(1) and (2) of the PHS Act. Sections 1704(1) and (2) of the PHS Act provides the Office of the PCPFS with authority to enter into co-sponsorships with non-Federal entities for certain health promotion activities. The 50th Anniversary observance offers partners the opportunity to make recommendations for improving the health of Americans in the future and for reducing health-care costs for individuals, public agencies, and private businesses and organizations. Finally, co-sponsorship with the Office of the PCPFS during the observance of its 50th anniversary throughout the year 2006 offers partners the opportunity to highlight their past, present, and future initiatives to promote physical activity, fitness, and/or sports and to associate their programs with the goals and objectives of the Office of the PCPFS.

Purpose and Scope

The Office of the PCPFS is extending this invitation to both existing and potential new partners to broaden the reach of PCPFS programs and to promote physical activity, fitness, and sports to all Americans in their communities and work places. The Office of the PCPFS has limited resources for implementing actions that address large-scale national, state, and local initiatives and for sponsoring campaigns to promote improvements in the status of physical activity, fitness, and the overall health of individuals and communities. The Office of the PCPFS relies upon the combined efforts of both public agencies and private organizations through co-sponsored initiatives and activities to bring about the societal and cultural adjustments necessary to influence the attitudes of individuals and communities concerning the importance of physical activity, fitness, and sports and to bring about change. The observance of the 50th Anniversary of the Office of the PCPFS offers an ideal opportunity for organizations not only to highlight longstanding successful collaborations with the Office of the PCPFS but also to establish new collaborations with the Office of the PCPFS to raise public awareness of the importance of physical activity and to develop new programs and initiatives.

In forming collaborative partnerships, the Office of the PCPFS is seeking organizations that can bring knowledge, skills, and expertise to work synergistically on physical activity, fitness, and/or sports activities during the year 2006 and beyond; the 50th anniversary celebration of the Office of the PCPFS offers an ideal opportunity to launch such collaborations. For example, the Office of the PCPFS is interested in partnerships with public and private organizations that might involve (but are not limited to) the following sponsoring or co-sponsoring examples:

(a) Develop and disseminate educational public information materials on physical activity, fitness, health and/or sports to stress the benefits of a healthy, active lifestyle; such materials might be targeted to specific populations by age, gender, ability level, cultural background, or

minority status (e.g. co-sponsorship of a publication; co-sponsorship of a Web site or Web-based materials for existing Web sites);

(b) Develop and disseminate a nationwide educational campaign, including advertisements and/or public service announcements (print, TV, and/or radio) to alert individuals and diverse media markets about the dangers of a sedentary lifestyle and to promote co-sponsored programs that might be developed in the course of this initiative. This might include but is not limited to the President's Challenge, a free, motivational tool and recognition program of the PCPFS;

(c) Create, develop, and evaluate effective programs and activities for physical activity, fitness and sports; such programs would provide evidence-based results and best practices;

(d) Co-sponsor the development and management of a CEO/Business round-table to raise awareness of the need for a fit and healthy workforce and to stress the potential role of business in fostering and promoting healthy lifestyles among employees and their families in an effort to reduce chronic disease and health care costs;

(e) Conduct educational and/or practical physical activity, fitness, and/or sports clinics in diverse venues (e.g. after school programs; senior activity centers; parks and recreation centers; others);

(f) Create a ''Road Show'' celebrating 50 years of fitness by providing demonstrations and coaching lessons for all ages that can be continued at the local level;

(g) Sponsor 50th Anniversary memorabilia for distribution at such venues as health fairs, athletic events, special events, and similar occasions;

(h) Sponsor 50th Anniversary special events;

(i) Any combination or enhancement of the above activities;

(j) Other innovative ideas.

Partnership/Co-Sponsorship Agreements

This Partnership Initiative is not a grant or contract award program. Any partnership formed between the Office of the PCPFS and an outside organization will be a voluntary collaboration. Each partner will be responsible for providing the resources necessary to carry out the specified activities of mutual interest contained in the organization's proposal. The Office of the PCPFS will execute, in advance, a concise, written agreement with collaborating partner(s). The partnership/co-sponsorship agreement will identify key elements of the project including: Goals and intended benefits; roles and responsibilities of each partner; resources each plans to commit to the project; any reporting plans; and the time period in which the partnership remains in effect.

Partnership/co-sponsorship agreements will make clear that there will be no Federal endorsement of commercial products or of particular companies. The Office of the PCPFS will have a right to review the use of any Departmental logo and statement related to the Office of the PCPFS programs or materials and products to ensure that they are suitable for the initiative and that government neutrality with respect to commercial products is maintained. When any Departmental logo is approved for use on commercial materials or products that promote the goals and mission of the Office of the PCPFS and its program activities, a disclaimer will be required. The disclaimer must be printed on, or affixed to, commercial partner materials and products and indicate that the use of the logo does not imply any Federal endorsement or warranty of a particular commercial product or of other products of a particular company.

Evaluation Criteria

After engaging in exploratory discussions of potential partnerships and partnership activities, the Office of the PCPFS will make a determination whether the Office of the PCPFS will engage in partnership activities with particular entities and the scope of those activities. The final decision to establish a partnership agreement with an outside organization will be made by the Office of the PCPFS Executive Director. The Office of the PCPFS Executive Director reserves the right to decline partnership opportunities that are not consistent with the Office of the PCPFS goals, mission, or priorities, or for reasons of limited federal resources available to appropriately manage and oversee a proposed partnership. Depending on circumstances, a variety of objective and subjective criteria may be applied. The following factors will be considered when selecting partners and determining the scope of partnership activities:

1. Is the proposed project consistent with the mission and priorities of the Office of the PCPFS and the outside organization?

2. Are the activities proposed by the offering entity likely to provide a substantial public benefit relative to the resources required?

3. Do the potential benefits of the proposed partnership outweigh any potential negative impact on the Department and its ability to accomplish its mission? For example, the Department will avoid any appearance that an offering entity's co-sponsorship of an event would improperly influence the Department or any HHS employee in other official matters in which the offering entity may have an interest. It may be possible to structure a proposal to minimize potential issues.

4. Does the outside entity have the expertise and capacity to carry out its proposed activities?

5. Has the outside entity demonstrated a willingness to work collaboratively with other public and private sector organizations to achieve the stated goals or to advance related efforts, activities, or initiatives?

Organizations that have goals and interests consistent with the mandate of the Office of the PCPFS are encouraged to reply to this notice. Such organizations should have appropriate expertise and resources and be willing to pursue and enhance physical activity, fitness, and/or sports activities within their own organizations. Organizations that meet the criteria are encouraged to reply to this notice.

Working collaboratively with its partners, the Office of the PCPFS and its partners will provide innovative opportunities in diverse venues to improve the adoption and maintenance of regular physical activity for the enhanced health and well-being of all Americans during the 50th anniversary year and beyond.

Dated: November 7, 2005.

Melissa Johnson,

Executive Director, President's Council on Physical Fitness and Sports, Department of Health and Human Services.

[FR Doc. 05–22532 Filed 11–10–05; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0555]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance

entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex.'' This draft guidance document describes a means by which natural rubber latex (latex) condoms with and without spermicidal lubricant containing nonoxynol–9 (N–9) may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to amend the classification regulations for condoms with and without spermicidal lubricant to designate this draft guidance as the special control for latex condoms with and without spermicidal lubricant. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance by February 13, 2006. Submit written or electronic comments on the information collection by January 13, 2006.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance document.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John Farnham, Center for Devices and Radiological Health (HFZ–332), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 240–276–0115.

SUPPLEMENTARY INFORMATION:

I. Background

The draft special controls guidance document, announced in this document, describes a means by which latex condoms with and without spermicidal lubricant may comply with the requirement of special controls for class II devices. Following is a brief overview of the regulatory history of these devices and an overview of the draft special controls guidance document. The preamble to the proposed rule, which is published elsewhere in this **Federal Register**, provides more detail on the regulatory history of these devices and FDA's examination of condom labeling.

A. Overview of Regulatory History

Condoms are devices that were on the market prior to the enactment of the Medical Device Amendments of 1976 and were intended for contraceptive and prophylactic (preventing transmission of sexually transmitted diseases (STDs)) uses. Condoms are classified at § 884.5300 (21 CFR 884.5300).

Condoms with spermicidal lubricant containing N–9 were introduced to the market after the enactment of the Medical Device Amendments. As discussed in more detail in the preamble to the proposed rule published elsewhere in this **Federal Register**, since 1982, condoms with spermicidal lubricant containing N–9 have been required to bear a contraceptive effectiveness statement to be classified under § 884.5310. This contraceptive effectiveness statement was part of the reclassification order for condoms with spermicidal lubricant on October 29, 1982 (47 FR 49021).

Both condoms and condoms with spermicidal lubricant containing N–9 are classified in class II. Both were originally classified before the enactment of provisions of the Safe Medical Devices Act of 1990 that broadened the definition of class II devices and now permit FDA to establish special controls beyond performance standards to help provide reasonable assurance of the safety and effectiveness of such devices. The notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** proposes to establish this draft guidance document as such a special control. Both condoms and condoms with spermicidal lubricant have also been the subject of specific labeling requirements and recommendations, as discussed next.

In 1987, shortly after the U.S. Surgeon General recommended using a condom for protection against Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS), FDA issued a letter to condom manufacturers with recommendations on condom labeling. This letter was part of a far-reaching public health campaign to inform the American public about AIDS, which was identified in 1981 and associated with HIV and sexual transmission vectors in 1983. The purpose of FDA's 1987 letter was to improve existing condom labeling to better inform condom users about protecting themselves against the spread of HIV/AIDS and other STDs. In 1989, FDA issued a letter further explaining its policy on condom labeling and the necessity of including in the labeling a statement of the condom's intended use(s).

In 1997, FDA published final labeling regulations applicable to latex condoms that address expiration dating and latex sensitivity (§§ 801.435 and 801.437 (21 CFR 801.435 and 801.437)). FDA established expiration dating requirements in response to information that showed that the effectiveness of latex condoms as a barrier to sexually transmitted diseases, including HIV, is dependent upon the integrity of the latex material. The expiration dating regulation of September 26, 1997, addresses the risk of condom deterioration due to product aging and helps ensure that consumers have information regarding the safe use of latex condoms (62 FR 50497 at 50501). The latex sensitivity labeling requirements of September 30, 1997, were added in response to numerous reports of severe allergic reactions and deaths related to a wide range of medical devices containing natural rubber (62 FR 51021 at 51029).

In July 1998, to encourage conformance with condom performance standards, FDA issued a guidance document entitled ''Latex Condoms for Men: Information for 510(k) Premarket Notifications: Use of Consensus Standards for Abbreviated Submissions,'' which outlined FDA's ''abbreviated review'' approach toward 510(k)s for condoms. To qualify for an abbreviated review, the condom manufacturer must declare conformance to standards recognized by FDA in accordance with section 514(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360d). This guidance also carried forward previously issued guidance on suggested labeling for the primary retail package and the package insert, as well as the foil wrapper for individual condoms. In particular, FDA guidance suggested that labeling on the primary package address contraception, and also include the following statement regarding STDs: ''If used properly, latex condoms will help to reduce the risk of transmission of HIV infection (AIDS) and many other sexually transmitted diseases.''

This same statement was also recommended for the individual foil wrapper of the condom.

FDA also carried forward a labeling recommendation for the package insert

to include the following expanded version of the previous statement:

If used properly, latex condoms will help to reduce the risk of transmission of HIV infection (AIDS) and many other sexually transmitted diseases, including chlamydia infections, genital herpes, genital warts, gonorrhea, hepatitis B, and syphilis.

In December 2000, Congress enacted Public Law 106–554, which among other provisions, directed FDA to ''reexamine existing condom labels'' and ''determine whether the labels are medically accurate regarding the overall effectiveness or lack of effectiveness of condoms in preventing sexually transmitted diseases, including [human papillomavirus (HPV)].'' In re-examining condom labeling as directed by Public Law 106–554, and in the development of the draft special controls guidance document, FDA considered the following points:

- Physical properties of condoms;
- Condom slippage and breakage during actual use,
- Plausibility for STD risk reduction attributable to condoms,
- Evaluations of condom effectiveness against STDs by other Federal agencies,
- Clinical data regarding condom protection against STDs,
- Information on N–9 and contraception.

The information FDA considered during the course of its re-examination of the medical accuracy of condom labeling and its analysis support the conclusion that condoms reduce the overall risk of STD transmission, although the degree of risk reduction for different types of STDs varies with their routes of transmission. The preamble to the proposed rule designating this draft guidance as a special control for male condoms made of natural rubber latex, published elsewhere in this **Federal Register**, discusses in detail FDA's review and resulting conclusions, which form the basis for the recommendations made in the draft guidance document.

B. Overview of Guidance

The recommendations in the draft guidance reflect the FDA's re-examination of the medical accuracy of condom labeling, as required by Public Law 106–554. The draft guidance document describes a means by which latex condoms with and without spermicidal lubricant may comply with the requirement of special controls for class II devices. The draft guidance document identifies the issues requiring special controls associated with these devices and recommends addressing these issues through labeling.

The labeling recommendations in the draft guidance are intended to provide information to users of latex condoms with and without spermicidal lubricant. The draft special controls guidance recommends labeling to inform users about the extent of protection provided by condoms against unintended pregnancy and against various types of STDs, as well as information about possible risks associated with exposure to N–9 contained in the spermicidal lubricant of some condoms. The labeling recommendations provide important information for condom users to assist them in determining whether latex condoms are appropriate for their needs and, if so, to determine whether a condom with or without N–9 lubricant is most suitable. FDA believes that this draft guidance is an appropriate special control to help provide reasonable assurance of the safety and effectiveness of latex condoms and latex condoms with spermicidal lubricant containing N–9.

At this time, FDA is not proposing to designate a special control for any condoms made of natural membrane (skin) or synthetic materials. Discussions with the condom industry indicate that condoms made from natural rubber latex represent nearly 98 percent of the U.S. retail market for condoms. The agency understands that all condoms distributed by public health and other organizations are also made from natural rubber latex, based on its discussions with manufacturers. The agency believes, therefore, that the recommendations in the draft special controls guidance document address the vast majority of condoms distributed in the United States. However, at a future date, FDA also intends to address condoms made from other materials that are not specifically addressed by this draft guidance. Until FDA provides further specific guidance for these products, manufacturers of synthetic condoms may consult Part C of FDA's guidance document entitled ''Testing Guidance for Male Condoms Made from New Material (June 25, 1995),'' which is available at *http://www.fda.gov/cdrh/ode/oderp455.html*, and manufacturers of natural membrane condoms may consult the guidance document entitled ''Guidance for Industry-Uniform Contraceptive Labeling (July 23, 1998),'' which is available at *http://www.fda.gov/cdrh/ode/contrlab.html*.

FDA believes, however, that most of the recommendations contained in the draft special controls guidance document for latex condoms regarding labeling to address N–9 are also applicable to nonlatex condoms containing N–9, and encourages manufacturers to follow those aspects, as noted in the draft guidance itself.

The labeling recommendations in the special controls guidance document, when final, will supersede statements in a number of documents, including:

- FDA letter to ''All U.S. Condom Manufacturers, Importers and Repackagers'' (April 7, 1987);
- FDA letter to ''Manufacturers, Importers, and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention'' (February 13, 1989), which is available at *http://www.fda.gov/cdrh/comp/053.pdf*.
- Contraceptive effectiveness statement required by the 1982 reclassification order for latex condoms with the spermicide, nonoxynol–9, as outlined in an October 29, 1982, **Federal Register** document (47 FR 49201).

If the draft guidance is finalized, FDA intends to withdraw or amend other documents to ensure consistency with the labeling recommendations in the special controls guidance document. Following the finalization of this guidance and the implementation of any final classification rule designating this document as a special control for latex condoms and latex condoms with spermicidal lubricant, labeling for those devices will need to address the issues covered in the final special controls guidance document, unless the device manufacturer in some other way provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, if finalized, will represent the agency's current thinking on labeling for male condoms made of natural rubber latex. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive the draft ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1548) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995 (the PRA)

Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, 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.

Title: Labeling for Male Condoms Made of Natural Rubber Latex

Description: Under the Medical Device Amendments of 1976 (Public Law 94–295), class II devices were defined as those devices for which there was insufficient information to show that general controls themselves would provide a reasonable assurance of safety and effectiveness, but for which there was sufficient information to establish performance standards to provide such assurance.

Both condoms and condoms with spermicidal lubricant containing N–9 are classified in class II. Both were originally classified before the enactment of provisions of the Safe Medical Devices Act of 1990 (Public Law 101–629) that broadened the definition of class II devices and now permit FDA to establish special controls beyond performance standards, including guidance documents, to help provide reasonable assurance of the safety and effectiveness of such devices.

In December 2000, Congress enacted Public Law 106–554, which among other provisions, directed FDA to ''reexamine existing condom labels'' and ''determine whether the labels are medically accurate regarding the overall effectiveness or lack of effectiveness in preventing sexually transmitted diseases* * *.'' FDA is recommending labeling changes intended to provide important information for condom users, including the extent of protection provided by condoms against various types of STDs.

Respondents to this collection of information are manufacturers and repackagers of male condoms made of natural rubber latex. FDA believes that this a one-time burden, because once a label is redesigned, it can be used indefinitely.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
35[2]	34	1,190	12	14,280
3[3]	34	102	12	1,224
Total				15,504

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Current manufacturers for year one.
[3] New manufacturers for years two and three.

The reporting burden hours to respondents in the first year is a one-time burden of 14,280 hours. FDA expects three new manufacturers or repackagers to enter the market yearly, and collectively have a one-time burden of 1,224 hours. The number of respondents and prospective new manufacturers cited in table 1 of this document are based on FDA's database of premarket submissions. The remaining figures were derived from a study performed for FDA by Eastern Research Group, Inc., an economic consulting firm, to estimate the impact of the 1999 Over-the-Counter (OTC) Human Drug Labeling Requirements final rule (64 FR 13254, March 17, 1999). Because the packaging requirements for condoms are similar to those of many OTC drugs, we believe the burden to redesign the labeling for OTC drugs is an appropriate proxy for the estimated burden to redesign condom labeling.

The latex allergy caution required by § 801.437 and referenced in the draft guidance does not constitute a ''collection of information'' under the PRA. Rather, it is a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)). The expiration dating requirements established by § 801.435 and referenced in the draft guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

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

Dated: June 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–22610 Filed 11–10–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0554]

Revised Compliance Policy Guide Regarding Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised compliance policy guide (CPG) Sec. 110.310 entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' The CPG provides written guidance to FDA's and Customs and Border Protection's (CBP's) staff on enforcement of section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulations, which require prior notice for food imported or offered for import into the United States. The CPG has been revised to finalize the sections pertaining to routine shipments of food that are transshipped through the United States, arriving from and exiting to the same country, and regarding the Harmonized Tariff Schedule (HTS) code that is part of the planned shipment information.

DATES: The revised CPG is final upon the date of publication. However, you may submit written or electronic comments on the revised CPG at any time.

ADDRESSES: You may submit comments, identified by Docket No. 2003D–0544 and/ Regulatory Information Number (RIN) number (if a RIN number has been assigned), by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- 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 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 additional information on submitting comments, 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.

Submit written requests for single copies of the revised guidance to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent.

FOR FURTHER INFORMATION CONTACT: Laura Draski, Office of Regulatory Affairs (HFC–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 866–521–2297.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 2005 (70 FR 10657), FDA announced the availability of a draft revision to CPG Sec. 110.310 entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' This revised guidance was issued with CBP concurrence and explains to FDA and CBP staff the new FDA and CBP policies on enforcement of section 307 of the Bioterrorism Act and its implementing regulations, which require prior notice to FDA of all food imported or offered for import into the United States (21 CFR parts 1.276 through 1.285). The new policies provide additional flexibility in filing prior notice when, due to the geography, the only practical transportation route available for the shipment is through the United States and when there is a prior notice violation because the prior notice does not include the 6-digit HTS code for the article of food.

FDA received 8 comments on the draft sections of the revised CPG. FDA reviewed and evaluated these comments and has modified the CPG with CBP concurrence, where appropriate.

FDA is issuing this CPG as level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The CPG represents the agency's current thinking on its enforcement policy concerning prior notice. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

II. Comments

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

III. Electronic Access

An electronic version of the revised CPG is available on the Internet at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: November 4, 2005.

Steve Niedelman,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 05–22500 Filed 11–10–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Public Health Services; Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members:

Andrew C. Knapp, Chairperson,
Eric Broderick,
Curt Coy,
Daryl W. Kade.

For further information about the SAMHSA Performance Review Board, contact the Division of Management Systems, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 3–1017, Rockville, Maryland 20857, telephone (240) 276–1124 (not a toll-free number).

Dated: November 8, 2005.

Charles G. Curier,

Administrator, SAMHSA.

[FR Doc. 05–22538 Filed 11–10–05; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–58]

Notice of Submission of Proposed Information Collection to OMB; Procedures for Appealing Section 8 Rent Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

When a rent increase for certain Section 8 subsidized projects is denied, in full or in part, owners may submit to HUD an appeal letter outlining the basis for the appeal. The appeal letter must be submitted to the Contract Administrator or the HUD Director for review. HUD uses the information to determine whether to deny or allow Section 8 rent increases.

DATES: *Comments Due Date:* December 14, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0446) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Procedures for Appealing Section 8 Rent Adjustments.

OMB Approval Number: 2502–0446.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: When a rent increase for certain Section 8 subsidized projects is denied, in full or in part, owners may submit to HUD an appeal letter outlining the basis for the appeal. The appeal letter must be submitted to the Contract Administrator or the HUD Director for review HUD uses the information to determine whether to deny or allow Section 8 rent increases.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	500	1		2		1,000

Total Estimated Burden Hours: 1,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 4, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer,Office of the Chief Information Officer.

[FR Doc. E5–6257 Filed 11–10–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–57]

Notice of Submission of Proposed Information Collection to OMB; Housing Opportunities for Persons With AIDS (HOPWA) Program: Competitive Grant Application; Annual Progress Report (APR) for (Competitive Grantees); Consolidated Annual Performance and Evaluation Report (CAPER) (Formula Grantees)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HOPWA provides states and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing and related supportive service needs of low-income persons with AIDS. Applicants are states, local governments and nonprofits. Grantees report on program accomplishments annually.

DATES: *Comments Due Date:* December 14, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0133) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Housing Opportinities for Persons withAIDS (HOPWA) Program: Competitive grant application; Annual Progress Report (APR) for (competitive grantees); Consolidated Annual Performance and Evaluation Report (CAPER) (formula grantees)

OMB Approval Number: 2506–0133.

Form Numbers: HUD–40110–B, HUD–40110–C, HUD–40110–D.

Description of the Need for the Information and Its Proposed Use: HOPWA provides states and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing and related supportive service needs of low-income persons with AIDS. Applicants are states, local governments and nonprofits. Grantees report on program accomplishments annually.

Frequency of Submission: On occasion, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	267	297		116		30,946

Total Estimated Burden Hours: 30,946.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 3, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–6258 Filed 11–10–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–25]

Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: Meetings will be held on Tuesday, November 29, 2005, 8 a.m.–5 p.m.; Wednesday, November 30, 2005, 8 a.m.–5 p.m.; and Thursday, December 1, 2005, 8 a.m.–11 a.m.

ADDRESSES: These meetings will be held at the Radisson Hotel Old Town, Alexandria, 901 North Fairfax Street, Alexandria, Virginia, 22314, telephone (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a

toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards.

Tentative Agenda

A. Welcome and Introductions.
B. Departmental Status Reports.
C. Installation Standards—Alternative Foundation Systems.
D. Full Committee meeting—By-law changes/processes and procedures/timelines.
E. Dispute Resolution Proposed Rule.
F. Accessibility—Universal Design—Visitability.
H. Public Testimony.
I. Reports and Actions on Committee work.
J. Adjourn.

Dated: November 4, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E5–6259 Filed 11–10–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–06–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will meet in Pinedale, Wyoming, for a business meeting. Group meetings are open to the public.

DATES: The PAWG will meet December 13, 2005, from 9 a.m. until 5 p.m.

ADDRESSES: The meeting of the PAWG will be held in the Lovatt room of the Pinedale Library, 155 S. Tyler Ave., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Mike Stiewig, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mills St., PO Box 738, Pinedale, WY, 82941; 307–367–5363.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds for the life of the field.

The agenda for this meeting will include discussions concerning any modifications task groups may wish to make to their monitoring recommendations, a discussion on monitoring funding sources, and overall adaptive management implementation as it applies to the PAWG. At a minimum, public comments will be heard prior to lunch and adjournment of the meeting.

Dated: November 3, 2005.

Priscilla Mecham,

Field Office Manager.

[FR Doc. 05–22491 Filed 11–10–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Record of Decision: General Management Plan for Boston Harbor Islands National Recreation Area

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Record of Decision on Final Environmental Impact Statement for General Management Plan, Boston Harbor Islands National Recreation Area.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat 852, as codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a record of decision on the abbreviated final environmental impact statement for the Boston Harbor Islands general management plan. On October 17, 2005 the Northeast Regional Director approved the Record of Decision for the project. The Record of Decision concludes the environmental analysis of the first general management for Boston Harbor Islands National Recreation Area and adopts the plan. The plan defines the park's mission and management direction and establishes a basic foundation for decision making in consultation with stakeholders. The primary action of the plan is to designate specific ''management areas'' for each area of the Boston Harbor Islands National Recreation Area. An extensive participatory process has characterized the development of the general management plan, including consultation with American Indian tribes. Implementation of the proposed general management plan would not result in the impairment of park resources and would enable the Boston Harbor Islands Partnership to protect park resources and provide for their enjoyment by visitors. The National Park Service commits to take all practicable measures to avoid or minimize environmental impacts that could result from implementation of the general management plan.

Dated: October 17, 2005.

Mary A. Bomar,

Regional Director, Northeast Region.

[FR Doc. 05–22530 Filed 11–10–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Office of Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, Justice.

ACTION: Change in meeting location.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter ''the Committee'').

DATES: The meeting will take place on November 14, 2005, from 8:30 a.m. to 5 p.m. and on November 15, 2005, from 8:30 a.m. to 12 noon.

ADDRESSES: The meeting will take place at the Department of Health and Human Services, Cohen Building, Room 5051, 330 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Kristina Rose, The National Advisory Committee on Violence Against Women, 800 K Street, NW., Ste. 920, Washington, DC 20530; by telephone at: (202) 307–6026; e-mail *Kristina.Rose@usdoj.gov;* or fax: (202) 307–3911. You may also view the Committee's Web site at: *http://www.usdoj.gov/ovw/nac/welcome.html.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws. The Committee also assists in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking. Because violence against women is increasingly recognized as a public health problem of staggering human cost, the Committee brings national attention to the problem to increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work and the Federal Government's response to violence against women; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws.

Schedule: This meeting will be held on November 14, 2005, from 8:30 a.m. until 5 p.m. and on November 15, 2005 from 8:30 a.m. to 12 noon, and will include breaks and a working lunch. Time will be reserved for public comment on November 14 beginning at 11:30 a.m. and ending at 12 p.m. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space-available basis is required. Persons who wish to attend must register at least six (6) days in advance of the meeting by contacting Kristina Rose by e-mail at: *Kristina.Rose@usdoj.gov;* or fax: (202) 307–3911. All attendees will be required to sin in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting. The meeting site is accessible to individuals with disabilities. Individuals who require special accommodations in order to attend the meeting should notify Kristina Rose by e-mail at: *Kristina.Rose@usdoj.gov;* or fax at: (202) 307–3911, no later than November 4, 2005. After this date, we will attempt to satisfy accommodation requests, but cannot guarantee the availability of any requests.

Written Comments: Interested parties are invited to submit written comments by November 4, 2005, to Kristina Rose at The National Advisory Committee on Violence Against Women, 800 K Street, NW., Ste. 920, Washington, DC 20530. Comments may also be submitted by e-mail at *Kristina.Rose@usdoj.gov*; or fax at (202) 307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting, which will discuss the implementation of the Violence Against Women Act of 1994 and the Violence Against Women Act of 2000, are requested to reserve time on the agenda by contacting Kristina Rose by e-mail at *Kristina.Rose@usdoj.gov*; or fax at (202) 307–3911. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the issue. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be mailed to the Committee at 800 K Street, NW., Ste. 920, Washington, DC 20530.

Dated: November 8, 2005.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. 05–22517 Filed 11–10–05; 8:45 am]

BILLING CODE 4410–FX–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: New collection Census of Jail Facilities.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collected is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 13, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James Stephan, Statistician (202) 616–3289, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Requests for written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New collection.

(2) *The title of the Form/Collection:* Census of Jail Facilities, 2006.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* CJ–3F. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* County and City jail authorities. Secondary: Federal authorities and private correctional facility operators. The Census of Jail Facilities, together with the Census of Jail Inmates, is the foundation for all national statistics on local jails and inmates. These censuses provide the frames from which to generalize to the nation and to track changes over time. Without periodic censuses, sample surveys would be unreliable, and statistics would be based on a group of jails of unknown representativeness, that were simply convenient to contact and willing to respond. These censuses provide a benchmark against which jurisdictions may compare their correctional populations. Administrators use their data to evaluate staffing and budget needs relative to similarly situated jail jurisdictions. Practitioners, policy makers, and researchers are able to test assertions and conclusions about the causes and consequences of current sentencing release policies. Finally, the censuses present raw material for discussion and evaluation of correctional policies and practices throughout the nation, in some States providing the only sources of objective descriptions of the operation of local jails.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Three thousand eighty-four respondents each taking an average of 120 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6,168 annual total burden hours associated with the collection.

If additional information is required, contact: Robert B. Briggs, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 7, 2005.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–22509 Filed 11–10–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy.

Date, time, place: November 29, 2005; 3–5 p.m.; Lincoln Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public. See section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app., and section (c)(9)(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B).

FOR FURTHER INFORMATION CONTACT: Gregory Schoepfle, Acting Director, Office of International Economic Affairs; Phone: (202) 693–4887.

Signed at Washington, DC, this 4th day of November 2005.

Martha Newton,

Acting Deputy Under Secretary, International Labor Affairs.

[FR Doc. 05–22526 Filed 11–10–05; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Draft NARA Guidance for Implementing Section 207(e) of the E-Government Act of 2002; Request for Comment

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of document; request for comment.

SUMMARY: NARA is seeking public comment on the draft NARA Guidance for Implementing Section 207(e) of the E-Government Act of 2002. This bulletin will provide Federal agencies with the National Archives and Records Administration's (NARA) approach to improve the management of electronic records, including web records, as directed by Section 207(e) of the E-Government Act of 2002, [Pub. L. 107–347].

DATES: Comments must be received by December 29, 2005

ADDRESSES: Please send your comments by e-mail to *comments @nara.gov* or by fax to 301–837–0319 or by mail to NPOL, National Archives and Records Administration, Room 4100, 8601 Adelphi Rd, College Park, MD 20740–6001

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–837–1477 or via e-mail at *nancy.allard@nara.gov.*

SUPPLEMENTARY INFORMATION: The E-Government Act of 2002 directs the Archivist of the United States to issue policies for effective management of electronic records, including Government information on the Internet (web records) by December 17, 2005. NARA has considered the December 2004 Report of the Interagency Committee on Government Information (ICGI) in developing these policies. The ICGI Report is available at *http://www.cio.gov/documents/ICGI/ICGI–207e-report.pdf.* For a paper copy of the Report, contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

Dated: November 4, 2005.

Nancy Allard,

Federal Register Liaison.

DRAFT NARA Bulletin 2006–XX

TO: Heads of Federal Agencies

SUBJECT: NARA Guidance for Implementing Section 207(e) of the E-Government Act of 2002

EXPIRATION DATE: October 1, 2009

1. What is the purpose of this bulletin?

This bulletin provides Federal agencies with the National Archives and Records Administration's (NARA) approach to improve the management of electronic records, including web records, as directed by Section 207(e) of the E-Government Act of 2002, [Pub. L. 107–347].

2. What is the background for this bulletin?

Section 207(e) directs the Archivist of the United States to issue policies:

(A) requiring the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) imposing timetables for the implementation of the policies, procedures, and technologies by agencies.

3. What policies is NARA issuing?

a. NARA issues regulations governing the management of all records, including electronic records in 36 CFR Ch. XII, Subchapter B. NARA also issues policy guidance that supplements these regulations.

b. This bulletin outlines the major pieces of existing NARA policy guidance related to electronic records management and the areas in which future policy will be made. The bulletin also establishes timelines by which Federal agencies and NARA must take action regarding electronic records management.

4. What must agencies do to implement this bulletin?

a. Agencies must continue to manage their records, including electronic records, consistent with 36 CFR Ch. XII, Subchapter B, Records Management. In addition, and as required by these regulations, agencies must continue to identify, schedule, and transfer to NARA records, particularly electronic records, that have or will likely have a permanent retention. By September 30, 2009, agencies must have NARA-approved records schedules covering all existing (as of December 17, 2005) electronic records systems.

b. To support this activity, NARA establishes the following timelines:

Date required	Responsible party (federal agencies or NARA)	Required actions
Ongoing	Federal Agencies	Federal agencies are already required to: • Implement processes and procedures to manage electronic records in existing agency systems; • Transfer to NARA permanent electronic records from existing or legacy systems according to approved records schedules; • Identify, schedule, and transfer to NARA permanent or potentially permanent electronic records from existing or legacy systems. By September 30, 2009, agencies must have NARA-approved records schedules covering all existing (as of December 17, 2005) electronic records systems.
Ongoing	Federal Agencies	Federal agencies must build records management capabilities into all newly developed systems that generate Federal records, specifically including functionalities to identify and transfer to NARA records of permanent or potentially permanent value.
By FY 2008 (October 1, 2007)	NARA	NARA will: • Articulate specifications for agencies to use to ensure the solutions professional and IT service providers sell to Federal agencies meet statutory and regulatory Federal records management requirements; and • Promulgate additional guidance and best practices for Federal agencies to identify, schedule, and transfer to NARA permanent or potentially permanent electronic records from existing or legacy systems.

Major areas of existing NARA guidance and plans for future guidance are described in the attachment to this bulletin.

5. How does the Electronic Records Archives (ERA) program relate to this bulletin?

a. On September 8, 2005, NARA awarded a six-year contract to Lockheed Martin Corporation to build the ERA system for NARA. The Initial Operating Capability for the system is scheduled to be available in late FY 2007 and Full Operating Capability is planned to be available in FY 2011. All records management tools, policies, and requirements developed by NARA support or will support the comprehensive and effective management of electronic records and their management within the ERA system, as well as the statutory and business needs of Federal agencies.

b. As Federal agencies develop procedures and processes to manage their records, especially permanent or potentially permanent electronic records, the procedures and processes should meet their agency business needs and be consistent with ERA. NARA will provide agencies with information regarding ERA as development proceeds.

6. Whom do I contact for additional information?

a. NARA's Life Cycle Management Division provides assistance and advice to agency records officers in the Washington, DC, area. Your agency's records officer may contact the NARA appraiser or records analyst with whom your agency normally works for support in carrying out this bulletin. A list of the appraisal and scheduling work groups is posted on the NARA Web site at *http://www.archives.gov/records-mgmt/appraisal/index.html.*

b. The Records Management staff in NARA's regional offices provides assistance to agency records officers across the country. A complete list of NARA regional facilities may be found at *http://www.archives.gov/facilities/index.html.*

c. If you need more general information about the contents of this bulletin, please contact [to be added when bulletin is issued].

Allen Weinstein,

Archivist of the United States.

[Attachment] Policy for Effective and Comprehensive Management of Electronic Records Introduction

The Federal Records Act directs the Archivist of the United States to provide guidance and assistance to Federal agencies to ensure adequate and proper documentation of the policies and transactions of the Federal Government.

The E-Gov Act of 2002 further directs the Archivist to issue policies to ensure that the Federal Records Act is applied effectively and comprehensively to Government information on the Internet and to other electronic records.

Existing Policy

To fulfill its statutory responsibilities, NARA regularly promulgates records management policy to ensure adequate and proper documentation of the policies and transactions of the Federal Government. Current records management policy is available at *http://www.archives.gov/records-mgmt/.*

The following are links to significant records management policy for electronic records, including web records.

Web Records:

NARA Guidance for Managing Web Records (January 2005)—*http://www.archives.gov/records-mgmt/policy/managing-web-records-index.html.*

Other Electronic Records

- Enterprise-Wide ERM.
  - Methodology for Determining Agency-unique Requirements (August 23, 2004)—*http://www.archives.gov/records-mgmt/policy/requirements-guidance.html.*
  - Coordinating the Evaluation of Capital Planning and Investment Control (CPIC) Proposals for ERM Applications (June 23, 2003)—*http://www.archives.gov/records-mgmt/policy/cpic-guidance.html.*
- Electronic Information Management Standards.
  - NARA Bulletin 2003–03, Endorsement of DoD Electronic Records Management Application (RMA) Design Criteria Standard, version 2 (January 15, 2003)—*http://www.archives.gov/records-mgmt/bulletins/2003/2003–03.html.*
- Transfer permanent electronic records to NARA.
  - Transfer Instructions for Permanent Electronic Records: Web Content Records (September 17, 2004)—*http://www.archives.gov/records-mgmt/initiatives/web-content-records.html.*
  - Transfer Instructions for Permanent Electronic Records: Digital Geospatial Data Records (April 9, 2004)—*http://www.archives.gov/records-mgmt/initiatives/digital-geospatial-data-records.html.*
  - Transfer Instructions for Permanent Electronic Records: Digital Photographic Records (November 12, 2003)—*http://www.archives.gov/records-mgmt/initiatives/digital-photo-records.html.*
  - Transfer Instructions for Permanent Electronic Records in Portable Document Format (PDF) (March 31, 2003)—*http://www.archives.gov/records-mgmt/initiatives/pdf-records.html.*
  - Transfer Instructions for Existing Scanned Images of Textual Records (December 23, 2002)—*http://www.archives.gov/records-mgmt/initiatives/scanned-textual.html.*
  - Transfer Instructions for Existing E-mail Messages with Attachments (September 30, 2002)—*http://www.archives.gov/records-mgmt/initiatives/e-mail-attachments.html.*
- NARA Guidance on Electronic Signatures.
  - Records Management Guidance for Agencies Implementing Electronic Signature Technologies—*http://www.archives.gov/records-mgmt/policy/electronic-signature-technology.html.*
  - Records Management Guidance For PKI-Unique Administrative Records—*http://www.archives.gov/records-mgmt/policy/pki-guidance.html.*
  - Records Management Guidance for PKI Digital Signature Authenticated and Secured Transaction Records—*http://www.archives.gov/records-mgmt/policy/pki.html.*

Future Tools, Policy, and Requirements

Electronic Records Management (ERM) Toolkit. The ERM Toolkit will be developed as an organized portal where a collection of proven ERM guidance tools such as case studies, best practice documents, process models, policies and directives, tips and techniques, training programs, lessons learned, presentations, and other practical tools that can be used by Federal agencies to promote and implement effective management of Government information on the Internet and other electronic records.

An initial proof-of-concept will be deployed in March 2006, with subsequent tools and capabilities added thereafter. NARA-developed guidance outlined below will be available in the ERM Toolkit.

Records Management Profile and Records Management Service Components. With a wide variety of stakeholders, NARA will develop policy and conceptual products to support Federal agencies in building records management requirements into IT systems creating electronic records. These include:

- *Records Management Profile.* The Records Management Profile is a framework that overlays, or cross-cuts, the inter-related Federal Enterprise Architecture (FEA) reference models: The Business Reference Model, the Service Component Reference Model, the Technical Reference Model, the Data Reference Model, and the Performance Reference Model. The Records Management Profile provides an overview of the FEA and explains how the reference models provide a context for applying effective records management practices.

Developed in concert with the Office of Management Budget (OMB) and other stakeholders, and currently under review at OMB, this tool will be available in FY 2006.

- *Records Management Service Components (RMSC).* In FY 2005, NARA led an effort with records management, counsel, IT, and program management leaders from eighteen Federal agencies that identified functional requirements for records management within a components-based architecture. An RMSC is a piece of software that provides services that support the creation, management, transfer, and destruction of electronic records within a components-based or service-oriented computing environment.

In FY 2006, NARA will invite back representatives from the eighteen participating agencies to review industry responses to a Request for Information (RFI) about the seven components currently identified to support records management in a components-based architecture and to finalize the requirements. The results of this activity will become part of a strategy to facilitate acquisition of RMSCs that can be used to provide interoperable Records Management functionality in any agency system that creates, receives, and manages electronic records in accordance with the FEA and with applicable laws and regulations.

Increasing Awareness of Records Management Considerations in the Professional Services and IT Services Community

NARA will broaden and increase records management considerations in professional services and IT system procurements by:

- Providing professional services providers (GSA Schedule Mission Oriented Business Integration Services (MOBIS) providers) criteria and standards to ensure statutory and regulatory Federal records management requirements are accounted for in the business solutions they provide to Federal agencies that affect or result in the creation of Federal electronic records. This work will be completed by October 1, 2008.
- Providing IT service providers (GSA Schedule 70 providers) criteria and standards to ensure statutory and regulatory Federal records management requirements are accounted for in IT systems creating electronic records in the transaction Federal Government business. This work will be completed by October 1, 2008.

Identification, Preservation, and Continued Access to Permanently Valuable Electronic Records

To ensure the identification, preservation, and continued access to Government information on the Internet and to other electronic records, NARA will develop policy for managing [1] permanent or potentially permanent electronic records generated in Federal agencies.

In addition to developing the tools outlined above and continuing general work on NARA regulations and guidance, NARA will develop:

• Concise, public-use versions of criteria in NARA 1441, Appraisal Policy of the National Archives and Records Administration.

• Concise articulations of NARA's permanent records priorities based on our governmentwide resource allocation results, identifying the Federal Enterprise Architecture, Business Reference Model, Services to Citizens areas (Lines of Business) that NARA is most concerned with.

• Self-analysis checklists for Federal agencies to use to identify and report on:

(a) The major government information systems resources that they are responsible for that generate permanent or potentially permanent electronic records; and

(b) The general, high-level technical requirements Federal agencies must meet to manage their permanent or potentially permanent electronic records.

The agency self-analysis would include the NARA 1441 and the resource allocation criteria, as well as technical evaluation based on the Records Management Profile.

These tools will allow agencies to help Federal agencies and NARA identify and manage the electronic records that need to be preserved for access and use by future generations.

TIMELINE FOR ACTION

Date required	Responsible party (Federal agencies or NARA)	Required actions
Ongoing	Federal Agencies	Federal agencies are already required to: • Implement processes and procedures to manage electronic records in existing agency systems; • Transfer to NARA permanent electronic records from existing or legacy systems according to approved records schedules; • Identify, schedule, and transfer to NARA permanent or potentially permanent electronic records from existing or legacy systems. By September 30, 2009, agencies must have NARA-approved records schedules covering all existing (as of December 17, 2005) electronic records systems.
Ongoing	Federal Agencies	Federal agencies must build records management capabilities into all newly developed systems that generate Federal records, specifically including functionalities to identify and transfer to NARA records of permanent or potentially permanent value.
By FY 2008 (October 1, 2007)	NARA	NARA will: • Articulate specifications for agencies to use to ensure the solutions professional and IT service providers sell to Federal agencies meet statutory and regulatory Federal records management requirements; and • Promulgate additional guidance and best practices for Federal agencies to identify, schedule, and transfer to NARA permanent or potentially permanent electronic records from existing or legacy systems.

[FR Doc. 05–22527 Filed 11–10–05; 8:45 am]
BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Availability of Draft Environmental Assessment for the Very Energetic Radiation Imaging Telescope Array System (Veritas)

AGENCIES: National Science Foundation (Lead Agency) and the U.S. Department of Energy (Cooperating Agency With Jurisdiction).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability, and opportunity for public review and comment, of the environmental assessment (EA) that supports the National Science Foundation (NSF) and U.S. Department of Energy (DOE) proposal to authorize the continued expenditure of grant funds totaling $12.3 million by the Smithsonian Institution to construct a four-telescope array near Tucson, Arizona. The draft EA is available at *http://veritas.sao.arizona.edu/*.

DATES: Comments should be received by the Agencies' third-party contractor, SWCA Environmental Consultants, no later than December 9, 2005.

ADDRESSES: Comments, or requests for copies of the draft EA, should be sent to: Tom Furgason, Project Manager, SWCA Environmental Consultants, 343 West Franklin Street, Tucson, AZ 85701.

Requests for copies of the draft EA may also be made by calling (520) 325–9194. Comments may be mailed to the address above or sent via facsimile at (520) 325–2003.

SUPPLEMENTARY INFORMATION: The NSF and DOE propose to authorize the continued expenditure of grant funds totaling $12.3 million by the Smithsonian Institution to construct a four-telescope array near Tucson, Arizona. The proposed telescopes and ancillary facilites are known as the Very Energetic Radiation Imaging Telescope Array System (VERITAS). The purpose of the proposed project would be to provide the ground-based capability to study extremely energetic gamma rays potentially produced from a variety of astrophysical sources. VERITAS would permit researchers to study the

[1] By managing, we include identifying, scheduling, and transferring to the National Archives.

properties of the sources of these gamma rays.

VERITAS would consist of an array of four identical telescopes, and ancillary facilites such as control building, communications links, and an access road with underground utilities. The preferred alternative site for VERITAS is a 10-hectare (25-acre) parcel in an area located west of the top of Kitt Peak in Horsehose Canyon. The proposed project area is within the Kitt Peak National Observatory (KPNO) area leased by NSF from the Tohono O'odham Nation. A 4-hectare (10-acre) site known as Montosa Canyon, located in the Coronado National Forest in southern Arizona, is also evaluated as an alternative site. Under the no action alternative, NSF and DOE would make no further funds available for the construction of the VERITAS project.

Issued in Arlington, VA.

Lawrence Rudolph,

General Counsel, National Science Foundation.

[FR Doc. 05–22544 Filed 11–10–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Revised Notice of Meeting

The agenda for the 165th ACNW meeting scheduled to be held on November 14–16, 2005 has been revised to reflect the changes noted below. Notice of this meeting was previously published in the **Federal Register** on Thursday, November 3, 2005 (70 FR 66864).

Monday, November 14, 2005

• *10:15 a.m.–12:15 p.m.: Public Comment Session* (Open)—The Committee will hear presentations from and hold discussions with interested stakeholders on the issues discussed during the earlier sessions. Scheduled presenters include: Dr. Dade Moeller, Chairman of the Board, Dade Moeller and Associates; Dr. Thomas Tenforde, President, National Council on Radiation Protection; Dr. John Kessler, Manager, Electric Power Research Institute High-Level Waste and Spent Nuclear Fuel Program; and Mr. Martin Malsh, Esq., State of Nevada.

• *1:30 p.m.–3:30 p.m.: Public Comment Session—Continued* (Open)—The Committee will continue to hear presentations from and hold discussions with interested stakeholders on the issues discussed during the earlier sessions.

• *3:45 p.m.–4:15 p.m.: ACNW Roundtable Discussion* (Open)—The Committee will review the matters discussed from the previous public sessions and decide whether it intends to provide advice to the Commission.

• *4:15 p.m.–5:30 p.m.: Preparation of ACNW Reports/Letters* (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting.

Tuesday and Wednesday, November 15–16, 2005

The agenda for Tuesday and Wednesday, November 15–16, 2005 remain the same as previously announced in the **Federal Register** on November 3, 2005.

For further information, contact Ms. Sharon A. Steele (telephone 301–415–6805) between 7:30 a.m. and 4 p.m., ET.

Dated: November 7, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–6244 Filed 11–10–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on November 29–30, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Tuesday, November 29, 2005–8:30 a.m. until the conclusion of business.

Wednesday, November 30, 2005–8:30 a.m. until the conclusion of business. The Subcommittee will review the application by Entergy Nuclear Northeast (Entergy) for an extended power uprate for the Vermont Yankee Nuclear Power Station. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, Entergy and other interested persons regarding this matter. 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. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordingswill be permitted. Signs will not be permitted in the meeting room.

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 to the agenda.

Dated: November 4, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–6245 Filed 11–10–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [70 FR 67765, November 8, 2005].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, November 10, 2005 at 10 a.m.

CHANGE IN THE MEETING: Time change/deletion of items.

The Closed Meeting scheduled for Thursday, November 10, 2005 at 10 a.m. has been changed to Thursday, November 10, 2005 at 9:30 a.m.

The following items will not be considered during the Thursday, November 10, 2005 *Closed Meeting:*

Opinion; and

Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 9, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22585 Filed 11–9–05; 11:13 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52740; File No. SR–Amex–2005–109]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Implementation Date for the ANTE System and Increased Floor Broker Functionality in the ANTE System

November 4, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by Amex. Amex has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend (1) Rule 900—ANTE to provide a revised date for the completion of the implementation of the ANTE System to all option classes; and (2) Rule 935—ANTE, Commentary .01 to establish a revised date for increased floor broker functionality in the ANTE System. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Revised Implementation Date—Rule 900—ANTE

On May 20, 2004, the Commission approved the Amex's proposal to implement a new options trading platform known as the Amex New Trading Environment (''ANTE''). On May 25, 2004, the Amex began rolling out the ANTE System on its trading floor on a specialist's post-by-specialist's post basis. At that time it was anticipated the roll-out would be completed by the end of the second quarter of 2005. The implementation date for the full roll-out of the ANTE System was extended to October 31, 2005.[5] The Amex has rolled out the ANTE System to all its option classes except two—the Nasdaq 100 Index (''NDX'') and the Mini Nasdaq Index (''MNX''). There are specific reasons why these products have not been rolled out on the ANTE System. The specialist in these products is concerned that the theoretical price calculator provided by the ANTE System may not accurately price the options on these indexes. The specialist is currently waiting for his own theoretical index price calculator, which has been installed and is currently being tested, to successfully calculate prices for these indexes and the options. It is expected that the MNX/NDX specialist will have its proprietary calculator in place by November 30, 2005.

The Amex is now proposing to further revise its implementation schedule to provide that the remaining two option classes will be on the ANTE System by November 30, 2005. Maintaining two systems for the trading of options—the legacy system (XTOPS, AODB and Auto-Ex) and ANTE—is costly. As a result the Exchange is working diligently to have all option classes on the ANTE System by November 30, 2005 so that it can retire its legacy systems.

Increased Floor Broker Functionality—Rule 935—ANTE

Amex Rule 935—ANTE (b) provides for the post trade allocation of contracts executed as the result of the submission of orders to trade with orders in the ANTE Central Book. If more than one ANTE Participant[6] and/or a floor broker representing a customer order submits an order to trade with an order in the ANTE Central book within a period not to exceed five seconds after the initial ANTE Participant has submitted its order, all those ANTE Participants and the floor broker's customer will be entitled to participate in the allocation of any executed contracts. The ANTE System is currently unable to provide the functionality necessary for floor brokers representing customer orders in the trading crowd to directly participate in the post trade allocation of orders taken off the Central Book. Commentary .01 to Amex Rule 935—ANTE provides a temporary methodology for the specialist to disengage the post trade allocation system in a specific series, which allows the floor broker to alert the specialist within the five second timeframe whenever his customer wants to participate in post trade allocation, and allows the specialist to provide for the customer's participation in post trade allocation when appropriate. The Commission approved the procedures set forth in Commentary .01 as a ''reasonable, temporary solution''[7]. Commentary .01 to Amex Rule 935—ANTE also provides that the ANTE System will give floor brokers greater functionality accessing the Central Book on March 31, 2005, or such other date as established by the Exchange and submitted to the Commission pursuant to Section 19(b) of the Act. The Exchange subsequently established October 31, 2005, as the date the increased functionality would be available in the ANTE System. Due to a delay in the roll out of the increased floor broker functionality, the Exchange now proposes to establish November 30, 2005, as the date set forth in Commentary .01 to Amex Rule 935—ANTE for such increased functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, to foster cooperation and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 52504 (September 23, 2005) 70 FR 57632 (October 3, 2005).

[6] Amex Rule 900—ANTE (b)(45) defines an ANTE Participant as either the specialist and/or registered options trader(s) assigned to trade a specific options class on the ANTE System.

[7] *See* Securities Exchange Act Release No. 49747 (May 20, 2004) 69 FR 30344 (May 27, 2004).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is designed to prohibit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and subparagraph (f)(6) thereunder.[11] Amex represents that the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to thirty days after the date of filing. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative upon filing.

The Commission hereby grants the request.[13] The Commission notes that Amex has represented that the theoretical price calculators for the final two options classes are not installed and/or functioning properly and that it has not yet implemented the functionality for floor brokers customer orders. The Commission believes that extending the deadline for implementing Amex Rules 900—ANTE and 935—ANTE by a month should afford Amex the time needed to install and test the theoretical price calculators and to implement the floor broker customer order functionality. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–109 and should be submitted on or before December 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6250 Filed 11–10–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.*

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52736; File No. SR–Amex–2005–111]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Suspension of Transaction Charges for Specialist Orders in the Nasdaq-100 Tracking Stock® (QQQQ)

November 4, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by Amex. Amex has designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (the ''Amex Fee Schedules'') to extend the suspension of transaction charges for specialist orders in connection with the trading of the Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from November 1, 2005 through December 31, 2005. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex's principal office, and from the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the suspension of transaction charges for specialist orders in QQQQ from November 1, 2005 through December 31, 2005. The current suspension of specialist transaction charges in QQQQ will otherwise terminate on October 31, 2005.[5]

Specialist orders in QQQQ executed on the Exchange currently are charged $0.0037 per share ($0.37 per 100 shares), capped at $300 per trade (81,081 shares). Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® formerly ''QQQ'' transferred its listing from Amex to The Nasdaq Stock Market, Inc (''Nasdaq''). It now trades on Nasdaq under the symbol QQQQ. After the transfer, Amex began trading QQQQ pursuant to unlisted trading privileges.

The Exchange submits that a suspension of transaction fees for specialist orders in connection with QQQQ is consistent with Section 6(b)(4) of the Act.[6] Specifically, the Exchange believes that extending the suspension of transaction charges for QQQQ specialist orders is an equitable allocation of reasonable fees among Exchange members. The fact that specialists have greater obligations than other members and are also subject to other Exchange fees, in addition to transaction fees, supports this proposal to temporarily extend the fee suspension.

The Exchange notes that specialists are also subject to a variety of Exchange fees other than transaction charges, such as a floor clerk fee, a floor facility fee, a post fee, and registration fee.[7] In addition, specialists and other floor members of the Exchange are subject to technology and membership fees.[8] Certain market participants, such as customers, non-member broker-dealers and market-makers, and member broker-dealers are not subject to the majority of these fees. In addition, specialist units, unlike registered traders and other floor members, must be sufficiently staffed and provide adequate technology resources in order to handle the volume of orders (especially in QQQQ) that are sent to the specialist post at the Exchange. These operational costs that are incurred by a specialist further support the Exchange proposal to extend the suspension of QQQQ transaction fees on specialist orders.

Specialists have certain obligations required by Exchange rules as well as the Act that do not exist for other market participants. For example, a specialist pursuant to Amex Rule 170 is required to maintain a fair and orderly market in his or her assigned securities. Other members of the Exchange as well as non-member market participants do not have this obligation. As a result, the Exchange believes that an extension of the transaction charge fee waiver for specialist orders in QQQQ is reasonable and equitable.

The Exchange is amending the Amex Fee Schedules to indicate that transaction charges for specialist orders in connection with QQQQ executed on the Exchange will be further suspended from November 1, 2005 through December 31, 2005.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(4) of the Act[10] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder[12] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] *See* Securities Exchange Act Release No. 52460 (September 16, 2005), 70 FR 55639 (September 22, 2005) (proposal previously extending this specialist transaction fee waiver).

[6] Section 6(b)(4) states that the rules of a national securities exchange must provide for ''the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.'' *See* Securities Exchange Act Release Nos. 52460 (September 16, 2005), 70 FR 55639 (September 22, 2005); 52267 (August 15, 2005), 70 FR 49338 (August 23, 2005); and 52268 (August 15, 2005), 70 FR 49336 (August 23, 2005) (proposals introducing and extending this specialist transaction fee waiver).

[7] The floor clerk, floor facility, post, and registration fees on an annual basis are $900, $2,400, $1,000, and $800, respectively.

[8] A technology fee of $3,000 per year is assessed on all specialists and other floor participants at the Exchange. Annual membership dues of $1,500 must be paid by all members while annual membership fees are payable depending on the type of membership and circumstances. Non-members are not subject to these fees.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–111 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-Amex-2005–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–111 and should be submitted on or before December 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6251 Filed 11–10–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52739; File No. SR–CBOE–2004–53]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Partial Amendment No. 1 Relating to Margin Requirements for Complex Options Spreads

November 4, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 30, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change and on August 23, 2005, filed a partial amendment to its proposed rule change [3] as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to incorporate margin requirements that are currently set forth in a Regulatory Circular into the Exchange's rules. The margin requirements pertain to complex option spreads. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SR–CBOE–2004–53: Amendment No. 1. CBOE, in coordination with the New York Stock Exchange, Inc. (''NYSE''), filed the partial amendment to conform the complex options spreads strategies to which its rule amendments apply to those of the NYSE.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The CBOE is proposing to incorporate the provisions of a Regulatory Circular (RG03–066—*Margin Requirements for Certain Complex Spreads*, dated August 13, 2003) into the Exchange's margin rules (Chapter 12). CBOE Regulatory Circular RG03–066 presents an interpretation of current margin requirements that allows the Exchange to derive, and put into effect, margin requirements for certain complex option spreads. This Regulatory Circular, a copy of which is attached as Exhibit A, was approved by the Commission on a one-year pilot basis.[4] This Regulatory Circular has been reissued as RG04–90 (dated August 16, 2004) and RG05–37 (dated April 6, 2005) pursuant to extensions of the pilot period granted by the Commission.[5]

As shown in Exhibit B, the Exchange is proposing to add definitions in Rule 12.3(a) of a ''long condor spread,'' ''short iron butterfly spread'' and ''short iron condor spread.'' These definitions cover six of the seven strategies identified in RG03–066. Each definition covers two strategies identified in RG03–066 because each definition provides for a base strategy, in which all options expire at the same time, and a calendar spread strategy, in which a long option may expire after the other options expire concurrently.

The Exchange is proposing a revision to its current definition of a butterfly spread to provide for the remaining strategy, a calendar spread version of the long butterfly spread (configuration number three in RG03–066). These revisions consist of (1) splitting the current butterfly spread definition into two definitions, one for the long butterfly spread and one for the short butterfly spread, (2) fashioning the two definitions so that they are consistent with the style and format of the new definitions referred to in the prior paragraph, and (3) providing for a calendar spread version in the long butterfly spread definition.

In Regulatory Circular RG03–066, call options were utilized to construct three of the seven strategy examples. Each of these three strategies has a parallel application with put options. For

[4] *See* Securities Exchange Act Release No. 48306 (Aug. 8, 2003), 68 FR 48974 (Aug. 15, 2003) (approving SR–CBOE–2003–24).

[5] *See* Securities Exchange Act Release No. 50164 (Aug. 6, 2004), 69 FR 50405 (Aug. 16, 2004) and Securities Exchange Act Release No. 51407 (Mar. 22, 2005), 70 FR 15669 (Mar. 28, 2005).

brevity, the put option versions were not specifically identified in the Regulatory Circular, but the Regulatory Circular was intended to apply to the put option counterpart of each of the strategies demonstrated with call options. Both the put and call option versions are provided for in the newly proposed rule definitions. The remaining four complex spread strategies originally identified in the Regulatory Circular involved both call options and put options (that is, ''iron'' strategies). Each of these four strategies has a reciprocal configuration (that is, the call options can precede the put options in ascending sequence of exercise prices). However, there is no need to address the reciprocal variations because there is no benefit from a margin requirement standpoint of including them in the iron strategy definitions.

As indicated in the Regulatory Circular and discussed in the Exchange's original filing of the Regulatory Circular with the Commission,[6] each of the complex spreads identified in the proposed rule can be derived by combining and netting two or more option spreads (that is, the butterfly spread, the box spread and the time spread) that are already identified in the margin rules and ascribed a margin requirement. Furthermore, the sum of the margin required on the basic option spreads that can be combined and netted to form a complex spread covers the maximum risk of the complex spread and, as in the Regulatory Circular, is the margin requirement specified in the proposed rules. Each of the subject complex spread strategies has a known and limited risk when configured as specified in the proposed definitions. As proposed, current Rule 12.3(c)(5)(C)(6) is revised to provide a margin requirement for each of the long condor spread, short iron butterfly spread and short iron condor spread.

Consistent with the Regulatory Circular, nothing in the proposed rule would prevent the subject complex spreads from being established outright. Thus, it would not be required that the applicable combination of individual option strategies first be established and netted.

Like the Regulatory Circular, the proposed rule prohibits European style options in the case of the calendar version of a complex spread, and requires that the interval between each option series be equal in the case of all complex spread strategies. However, unlike the Regulatory Circular, the proposed rules would not limit complex spreads to a margin account. The Exchange is additionally proposing a revision to Rule 12.3(e)—*Customer Cash Account—Spreads,* that adds the long condor spread, short iron butterfly spread and short iron condor spread as strategies permitted to be established and carried in a cash account, provided they are composed of cash-settled, European style options that all expire at the same time.

The Exchange has received no negative comments concerning Regulatory Circular RG03–66 since it has been issued. The Exchange is not aware of any negative consequences as a result of applying the margin requirements permitted by Regulatory Circular RG03–66.

2. Statutory Basis

The Exchange believes that the proposed margin requirements cover the maximum risk involved, providing sufficient safety and soundness for the clearing firm and the market overall. Additionally, the proposed rule would allow investors to more efficiently implement the subject complex spreads. As such, the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5)[8] of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2004–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE–2004–53 and should be submitted on or before December 5, 2005.

[6] *See* Securities Exchange Act Release No. 48115 (July 1, 2003), 68 FR 41027 (July 9, 2003).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

Exhibit A

Regulatory Circular RG03–66

To: Member Organizations
From: Division of Regulatory Services
Date: August 13, 2003
Subject: Margin Requirements for Certain Complex Spreads
Exchange Contacts: James Adams (312) 786–7718, Richard Lewandowski (312) 786–7183

Key Points

- Certain complex option spreads (specified below) are the equivalent of combining two or more spreads that are currently recognized in the margin rules of the Chicago Board Options Exchange (the ''Exchange'' or ''CBOE'').
- Because these complex spreads can be shown to equate to aggregations of two or more currently recognized spreads, current margin rules are deemed to provide a margin requirement for each complex spread in that the rules provide a margin requirement for each spread in the equivalent aggregation.
- Member organizations may require margin for these complex spreads of not less than the sum of the margin required on each spread in the equivalent aggregation.
- The margin requirements set forth in this Regulatory Circular will be in effect as a pilot until August 8, 2004.

Discussion

It is known that certain complex spread configurations are the net result of combining two or more spread strategies that are currently recognized in the Exchange's margin rules. Specific complex spread configurations are listed below, along with the currently recognized spreads to which they can be traced. The expiration months, exercise prices, interval between exercise prices, and option premiums used in each configuration are for illustration only. However, as illustrated, the expiration months and sequence of the exercise prices must fit the same pattern, and the intervals between the exercise prices must be equal. Note that netting of contracts in option series common to each of the currently recognized spreads in an aggregation reduces it to the complex spread.

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[9] 17 CFR 200.30–3(a)(12).

	PUTS			*CALLS*					
	Feb 45 @ .5	Feb 50 @ 1	Feb 55 @ 2	Feb 45 @ 16.5	Feb 50 @ 12	Feb 55 @ 8	Feb 60 @ 6	Feb 65 @ 5	Apr 60 @ 7
Long Butterfly					1	-2	1		
Long Butterfly						1	-2	1	
Net - **Configuration I**					**1**	**-1**	**-1**	**1**	
Long Butterfly					1	-2	1		
Short Box		1	-1		-1	1			
Net - **Configuration II**		**1**	**-1**			**-1**	**1**		
Long Butterfly					1	-2	1		
Long Butterfly						1	-2	1	
Short Box		1	-1		-1	1			
Net - **Configuration III**		**1**	**-1**				**-1**	**1**	
Long Time Spread							-1		1
Long Butterfly					1	-2	1		
Net - **Configuration IV**					**1**	**-2**			**1**
Long Time Spread							-1		1
Long Butterfly					1	-2	1		
Long Butterfly				1	-2	1			
Net - **Configuration V**				**1**	**-1**	**-1**			**1**
Long Time Spread							-1		1
Long Butterfly					1	-2	1		
Short Box		1	-1		-1	1			
Net - **Configuration VI**		**1**	**-1**			**-1**			**1**
Long Time Spread							-1		1
Long Butterfly					1	-2	1		
Long Butterfly				1	-2	1			
Short Box	1	-1		-1	1				
Net - **Configuration VII**	**1**	**-1**				**-1**			**1**

As illustrated above, the complex spread configurations equate to aggregations of currently recognized spreads. Therefore, for complex spreads fitting the above configurations, whether established outright or through netting, member firms must require initial and maintenance margin of not less than the sum of the margin required on each of the currently recognized spreads in the applicable aggregation subject to the following limitations:

- The complex spread must be carried in a margin account,
- European style options are not permitted for the configurations involving time spreads (IV through VII),
- The intervals between exercise prices must be equal, and
- Each complex spread must comprise four option series, except for Configuration IV, which must comprise three option series.

Summing the margin required on each currently recognized spread in each of the applicable aggregations renders a margin requirement for the subject complex spread configurations as follows:

Configuration	Margin requirement
I	Pay for the net debit in full.
II	Exercise price interval (aggregate), net credit may be applied.
III	Exercise price interval (aggregate), net credit may be applied.
IV	Pay for the net debit in full.
V	Pay for the net debit in full.
VI	Exercise price interval (aggregate), net credit may be applied.

Configuration	Margin requirement
VII	Exercise price interval (aggregate), net credit may be applied.

Using Configuration III as an example, the margin requirement and SMA debit or margin call would be as follows:

	PUTS		CALLS			
	Feb 50 @ 1	Feb 55 @ 2	Feb 50 @ 12	Feb 55 @ 8	Feb 60 @ 6	Feb 65 @ 5
Long Butterfly #1			1	-2	1	
Long Butterfly #2				1	-2	1
Short Box #1	1	-1	-1	1		
Net – **Configuration III**	**1**	**-1**			**-1**	**1**

Margin Calculation: $5.00 × 1 contract × 100 shares = $500.00

Margin Requirement: $500.00

SMA Debit or Margin Call: $500.00 – $200.00 = $300.00

Explanation: The initial and maintenance margin requirement is the exercise price interval (aggregate). Establishing this complex spread results in a net credit of $200.00 that may be applied to the margin requirement.

As shown in the table below, the same margin requirement, and SMA debit or margin call, would result by taking the sum of the margin required on each spread in the equivalent aggregation.

	Net dr or cr	Margin req.	Deposit
Long Butterfly	$200 dr	0	$200
Long Butterfly	$100 dr	0	100
Short Box #1	$500 cr	$500	0
Total	$200 cr	500	300

The margin requirements set forth in this Regulatory Circular will be in effect as a pilot until August 8, 2004.

Questions regarding margin requirements should be directed to James Adams at (312) 786–7718 or Richard Lewandowski at (312) 786–7183.

Exhibit B

(additions: italicized, deletions:[bracketed])

CHICAGO BOARD OPTIONS EXCHANGE, INC.

CHAPTER XII

Margins

Rule 12.3. Margin Requirements

12.3 (a) Definitions. For purposes of this Rule, the following terms shall have the meanings specified below.

(1) through (4)—No change

(5) *The term ''long butterfly spread'' means long put / two short puts / long put or long call / two short calls / long call where: the options are on the same underlying instrument, the long options are different option series, the short options are the same option series, the exercise prices of the positions are in ascending order, either all options expire at the same time or a long option expires after the other options expire concurrently, and the interval between exercise prices is equal. In the case of long butterfly spreads composed of cash-settled, European style index options, all options must expire at the same time.* [The term ''butterfly spread'' means an aggregation of positions in three series of either put or call options all having the same underlying component or index and time of expiration, and based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, which positions are structured as either (A) a ''long butterfly spread'' in which two short options in the same series are offset by one long option with a higher exercise price and one long option with a lower exercise price or (B) a ''short butterfly spread'' in which two long options in the same series offset one short option with a higher exercise price and one short option with a lower exercise price.]

(6) The term ''short butterfly spread'' means short put / two long puts / short put or short call / two long calls / short call where: the options are on the same underlying instrument, the short options are different option series, the long options are the same option series, the exercise prices of the positions are in ascending order, all options expire at the same time, and the interval between exercise prices is equal.

(7) The term ''long condor spread'' means long put / short put / short put / long put or long call / short call / short call / long call where: the options are on the same underlying instrument, each option is a different option series, the exercise prices of the options are in ascending order, either all options expire at the same time or a long option expires after the other options expire concurrently, and the interval between exercise prices is equal. In the case of long condor spreads composed of cash-settled, European style index options, all options must expire at the same time.

(8) The term ''short iron butterfly spread'' means long put / short put / short call / long call where: the options

are on the same underlying instrument, each option is a different option series, the exercise prices of the options are in ascending order, the short options have the same exercise price, either all options expire at the same time or a long option expires after the other options expire concurrently, and the interval between exercise prices is equal. In the case of short iron butterfly spreads composed of cash-settled, European style index options, all options must expire at the same time.

(9) The term ''short iron condor spread'' means long put / short put / short call / long call where: the options are on the same underlying instrument, each option is a different option series, the exercise prices of the options are in ascending order, either all options expire at the same time or a long option expires after the other options expire concurrently, and the interval between exercise prices is equal. In the case of short iron condor spreads composed of cash-settled, European style index options, all options must expire at the same time.

[(6)]*(10)* The term ''box spread'' means an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same underlying component or index and time of expiration, and are based on the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

[(7)]*(11)* The term ''underlying stock basket'' means a group of securities which includes each of the component securities of the applicable index and which meets the following conditions (i) the quantity of each stock in the basket is proportional to its representation in the index, (ii) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered, (iii) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value and (iv) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account.

[(8)]*(12)* The term ''cash equivalent'' is as defined in Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System.

[(9)]*(13)* The term ''listed'' for purposes of this Chapter 12 means a security traded on a registered national securities exchange or automated facility of a registered national securities association.

[(10)]*(14)* The term ''OTC margin bond'' for purposes of this Chapter 12 means (1) any debt securities not traded on a national securities exchange that meet all of the following requirements (a) at the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding; (b) the issue was registered under Section 5 of the Securities Act of 1933 and the issuer either files periodic reports pursuant to the Act or is an insurance company under Section 12(g)(2)(G) of the Act; or (c) at the time of the extension of credit the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or (2) any private pass-through securities (not guaranteed by a U.S. government agency) that meet all of the following requirements: (a) An aggregate principal amount of not less than $25,000,000 was issued pursuant to a registration statement filed with the Commission; and (b) current reports relating to the issue have been filed with the Commission; and (c) at the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering.

(b)—No change

(c)(1) through (c)(5)(C)(5)—No change

[6) Butterfly Spread. This subparagraph (c)(6)(C)(6) applies to a butterfly spread as defined in subparagraph (a)(5) of this Rule where all option positions are listed or guaranteed by the carrying broker-dealer.

(1) In respect of a long butterfly spread as defined in subparagraph (a)(5) of this Rule, the net debit must be paid in full.

(2) In respect of a short butterfly spread as defined in subparagraph (a)(5) of this Rule, margin must be deposited and maintained equal to at least the amount of the aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of calls options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options. The net proceeds from the sale of short option components may be applied to the requirement.]

(6) Long Butterfly Spread or Long Condor Spread. This subparagraph (c)(5)(C)(6) applies to a long butterfly or condor spread as defined in subparagraphs (a)(5) and (a)(7), respectively, of this Rule where all option positions are listed or guaranteed by the carrying broker-dealer. In respect of a long butterfly or long condor spread as defined in subparagraphs (a)(5) and (a)(7), respectively, of this Rule, the net debit must be paid in full.

(7) Short Butterfly Spread, Short Iron Butterfly Spread or Short Iron Condor Spread. This subparagraph (c)(5)(C)(7) applies to a short butterfly, short iron butterfly or short iron condor spread as defined in subparagraphs (a)(6), (a)(8) and (a)(9), respectively, of this Rule where all option positions are listed or guaranteed by the carrying broker-dealer. In respect of a short butterfly, short iron butterfly or short iron condor spread as defined in subparagraphs (a)(6), (a)(8) and (a)(9), respectively, of this Rule, margin must be deposited and maintained equal to at least the amount of the exercise price interval. The net proceeds from the sale of short option components may be applied to the requirement.

[(7)]*(8)* Box Spread. This subparagraph [(c)(6)(B)(7)] *(c)(5)(C)(8)* applies to box spreads as defined in subparagraph (a)[(6)]*(10)* of this Rule where all option positions are listed or guaranteed by the carrying broker-dealer.

(1) In respect of a long box spread as defined in subparagraph (a)[(6)]*(10)* of this Rule, the net debit must be paid in full.

(2) In respect of a short box spread as defined in subparagraph (a)[(6)]*(10)* of this Rule, margin must be deposited and maintained equal to at least the amount of the aggregate difference between the exercise prices. The net proceeds from the sale of short option components may be applied to the requirement.

[(8)]*(9)* Long Box Spread in European Style Options. In respect of a long box spread as defined in subparagraph (a)[(6)]*(10)* of this Rule, in which all component options have a European style exercise provision and are listed or guaranteed by the carrying broker-dealer; margin must be deposited equal to at least 50% of the aggregate difference in the exercise prices. The net proceeds from the sale of short option components may be applied to the requirement. For margin purposes, the long box spread may be valued at an amount not to exceed 100% of the aggregate difference in the exercise prices.

(d)—No change

(e) Customer Cash Account—Spreads. A European style cash-settled index option, stock index warrant or currency index warrant carried in a short position

is deemed a covered position, and eligible for the cash account, provided a long position in a European style cash-settled index option, stock index warrant or currency warrant having the same underlying component or index that is based on the same aggregate current underlying value, is held in or purchased for the account on the same day provided:

(1)—No change

(2) *Long* Butterfly Spreads, *Short Butterfly Spreads, Long Condor Spreads, Short Iron Butterfly Spreads or Short Iron Condor Spreads. The captioned spreads, as defined in subparagraphs (a)(5), (a)(6), (a)(7), (a)(8) and (a)(9), respectively, of this Rule, are permitted in a cash account only if they are composed of cash settled, European style options and all options expire at the same time,* [Put or call options carried in a short position are deemed covered positions and eligible for the cash account provided the account contains long positions of the same type which in conjunction with the short options constitute a butterfly spread as defined in subparagraph (a)(5) of this Rule] and provided:

[(A) all component options are European style,]

[(B) all component options are cash settled,]

[(C)]*(A)* the long options are held in, or purchased for the account on the same day,

[(D)]*(B)* in respect of a long butterfly spread or long condor spread as defined in subparagraphs (a)(5) and (a)(7), respectively, of this Rule, the net debit is paid in full,

[(E)]*(C)* in respect of a short butterfly spread, short iron butterfly spread or short iron condor spread as defined in subparagraphs (a)([5]6), (a)(8) and (a)(9), respectively, of this Rule, either there is held in the account at the time the positions are established or received into the account promptly thereafter:

(1) Cash or cash equivalents of not less than the amount of the *exercise price interval*[aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options], to which requirement the net proceeds from the sale of short option components may be applied, or

(2) An escrow agreement. The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the *exercise price interval*[aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options] and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice [on the call (put) with the lowest (highest) exercise price].

[(F)]*(D)* all component options are listed or guaranteed by the carrying broker-dealer.

(3)—No change

12.3(f) through (k)—No change

* * *Interpretations and Policies:

.01–.19—No change

[FR Doc. E5–6249 Filed 11–10–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52721; File No. SR–DTC–2005–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Compliance With Regulations Administered by the Office of Foreign Assets Control

November 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 9, 2005, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change and on October 25, 2005, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC would revise its Deposit Service, Custody Service, and Withdrawals-By-Transfer Service procedures.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule changes, DTC would revise its Deposit Service, Custody Service, and Withdrawals-By-Transfer Service procedures. These changes are based upon guidance provided by the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') to DTC.

1. Deposit Service

In order to receive immediate credit in its securities account at DTC for a deposit of registered securities, a participant would be required to certify to DTC that it has compared the parties identified on the deposited certificate (*e.g.*, the issuer, the party in whose name the deposited security is registered, and all assignees) against OFAC's list of targeted countries, Specially Designated Nationals, and other parties designated by OFAC (collectively referred to as the ''OFAC list'') and that there were no matches identified by such comparison.

In the case of a deposit of registered securities by a participant located outside the United States, including a deposit by or for the benefit of a participant accepted at a depository facility located outside the United States, the participant will not receive immediate credit in its securities account. DTC will give credit for the deposit only after DTC has screened the parties on the deposit against the OFAC list and has identified no matches.

2. Custody Service

With respect to securities and other financial instruments that are deposited pursuant to DTC's Custody Service procedures, DTC will act on the instructions of the depositing participant only after DTC has screened the parties on the deposit against the

OFAC list and has identified no valid matches.[2]

3. Withdrawal-By-Transfer Service

For securities on deposit that are sought to be withdrawn pursuant to DTC's Withdrawal-By-Transfer Service, including Withdrawal-By-Transfer requests for Direct Registration, DTC will act on the instructions of the withdrawing participant only after DTC has screened the investor in whose name the securities are to be registered against the OFAC list and has identified no valid match.

For each service, in the event that DTC identifies a match against the OFAC list, DTC would attempt to remove false-positive matches. For valid matches, DTC would present the matches to participants through a new Participant Terminal System function called ''OFAP.'' Participants would be required to review each certificate registration identified as a potential match through the ''OFAP'' function by comparing the certificate registration to the OFAC text information and respond with a comment for each registration by providing factual information sufficient for DTC to conclude, in its sole discretion, that the investor is or is not the person or entity listed on the OFAC list.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder because it will enhance DTC's compliance with applicable laws thereby reducing risks and associated costs to DTC and its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/ sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–DTC–2005–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–9303.

All submissions should refer to File No. SR–DTC–2005–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/ sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File No. SR–DTC–2005–14 and should be submitted on or before December 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6248 Filed 11–10–05; 8:45 am]

BILLING CODE 8010–01–P

[2] DTC is already screening the registration information for securities it is holding as part of its Custody Service.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52746; File No. SR–NASD–2005–106]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding Fees for Closed-End Funds Listing on the Nasdaq Capital Market

November 7, 2005.

On August 31, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding fees for closed-end funds listing on the Nasdaq Capital Market.[3] Nasdaq has proposed to amend NASD Rules 4510 and 4520 to: (i) Decrease the entry fee for listing a closed-end fund on the Nasdaq Capital Market to $5,000 (of which $1,000 is a non-refundable application fee) per fund; and (ii) adopt a new annual fee schedule for closed-end funds on the Nasdaq Capital Market, which is identical to that of funds listed on the Nasdaq National Market.[4] The proposed rule change was published for comment in the **Federal Register** on October 3,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Subsequent to the Nasdaq filing of this proposed rule, Nasdaq filed, and the Commission approved, another proposed rule change which renamed ''The Nasdaq SmallCap Market'' as ''The Nasdaq Capital Market.'' *See* Securities Exchange Act Release No. 52489 (September 21, 2005) 70 FR 56948 (September 27, 2005).

[4] Nasdaq recently adopted new listing fees for Closed-End Funds listing on the Nasdaq National Market. *See* Securities Exchange Act Release No. 52277 (August 17, 2005), 70 FR 49347 (August 23, 2005) (SR–NASD–2005–096).

2005.[5] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[6] In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act[7] in that it is designed to prevent fraudulent and manipulative acts and practices, 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.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–2005–106) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6246 Filed 11–10–05; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 52515 (September 27, 2005), 70 FR 57638 (October 3, 2005).

[6] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52720; File No. SR–PCX–2005–120]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Remote Market Makers

November 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 6.35 by eliminating the restriction contained in PCX Rule 6.35(h)(4) that prohibits a Remote Market Maker (''RMM'') from concurrently trading and/or quoting the same option issue as an RMM who is a Nominee of the same OTP Firm. The text of the proposed rule change is set forth below. Additions are in italics and deletions are in brackets.

Rules of the Pacific Exchange, Inc., Rule 6 Options Trading—Appointment of Market Makers

Rule 6.35 (a) thru 6.35(g)—No Change

(h) If an OTP Holder or OTP Firm has two or more Nominees that are registered as Remote Market Makers, then:

(1) The number of OTPs held in the name of such Remote Market Makers may be aggregated for the purpose of determining the number of options issues eligible for primary appointment pursuant to subsection (g)(2) above;

(2) The primary appointment applies to the OTP Holder or OTP Firm, subject to the approval of the Exchange; *and*

(3) The distribution of the option issues within the primary appointments for each Remote Market Maker will be at the discretion of the OTP Holder or OTP Firm.*[*; and

(4) At no time will a Remote Market Maker concurrently trade or quote the same option issue as a Remote Market Maker or Lead Market Maker who is a Nominee for the same OTP Holder or OTP Firm.]

(i)—No Change

Commentary: .01 thru .05—No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 6.35 governs the appointment of Market Makers. The rule change would eliminate PCX Rule 6.35(h)(4), which prohibits two or more RMMs who are Nominees of the same OTP Firm from concurrently trading options in the same class.

The current restriction on RMMs that are from the same OTP Firm concurrently trading the same issues was included as part of Amendment No. 2 to PCX–2002–36,[5] (Rules of PCX Plus). This restriction grew out of early concerns over trade allocation and the possibility that an OTP Firm could unfairly game the ''size pro rata'' allocation method that PCX Plus utilizes. It was thought that having multiple RMMs in the same issue, quoting smaller individual markets, could somehow cause a greater contract allocation than a single RMM quoting the same aggregate size market. PCX Rule 6.76, Priority and Order Allocation Procedures, governs trade allocations for trades executed on the PCX Plus System. Specifically, PCX Rule 6.76(a)(4) outlines the Size Pro Rata Allocation. By reviewing this rule, one can see that the PCX allocation method is based strictly on the market size that Market Makers are quoting at the time of a trade. A single Market Maker quoting one size would be entitled to no more or no less than two or more Market Makers quoting the same aggregate size. Due to the fact that trade allocations are based strictly on quote size, and not the number of quoters, the Exchange believes that PCX Rule 6.76(h)(4) is obsolete and serves no purpose.

Some PCX OTP Firms are large businesses that have multiple Nominees that pursue separate and distinct trading strategies, and each of these Nominees may be interested in serving in an RMM capacity. Under present PCX rules, each OTP Firm is limited to allowing only one RMM to trade a particular options issue, regardless of the number of Nominees the firm may employ. By eliminating the current restriction on affiliated RMMs, these individual Nominees will be able to concurrently trade the same options issue. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

Exchange believes that additional market participants will create deeper markets, allowing for better executions and better prices for all customers. In this regard, the PCX proposes to no longer prohibit multiple Nominees of an OTP Firm from concurrently trading as RMMs in the same option issue.

2. Statutory Basis

For the above reasons, the Exchange believes that the proposed rule change would enhance competition. The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

The Exchange has requested that the Commission accelerate the operative date so that the proposed rule change may take effect upon filing. The Commission believes that acceleration of the operative date will permit more RMMs to trade the same options issue, which should increase liquidity in the market thereby allowing for better executions and better prices for customers. For these reasons, the Commission finds it consistent with the protection of investors and the public interest to accelerate the operative date of the proposed rule change so that it may become operative immediately upon filing.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–120 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–120. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–120 and should be submitted on or before December 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6252 Filed 11–10–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52745; File No. SR–Phlx–2005–64]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Establish Certain Fees With Respect to Transactions Executed Through the Intermarket Trading System November 7, 2005

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enter into arrangements with other national

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

securities exchanges to pass certain fees they have collected from members for transactions executed on another exchange through the Intermarket Trading System (''ITS''). This proposal does not require changes to Phlx rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act [3] requires each national securities exchange to pay the Commission a fee based on the aggregate dollar amount of certain sales of securities (''covered sales''). Rules 31 and 31T, adopted by the Commission in June 2004,[4] established procedures for the calculation and collection of Section 31 fees on such covered sales. Rule 31 requires each national securities exchange that owes Section 31 fees to submit a completed Form R31 to the Commission each month, beginning with July 2004. Rule 31T required each exchange to submit a completed Form R31 for each of the months September 2003 to June 2004, inclusive. Each national securities exchange must report its covered sales volume based on the data from a designated clearing agency, when available. The designated clearing agency for covered sales of equity securities is the National Securities Clearing Corporation (''NSCC''). These covered sales are reported in Part I of Form R31, and each exchange is required to ''provide in Part I only the data supplied to it by a designated clearing agency.'' [5] The data supplied by NSCC for the period September 2003 through August 2004 did not accurately reflect the aggregate dollar value of the covered sales occurring on each exchange to permit reports to be made in accordance with new Rules 31 and 31T. In particular, the data NSCC reported to each national securities exchange included non-covered sales data for sales originating on one exchange and executed on another exchange through the ITS.[6]

Section 31 requires that national securities exchanges pay a fee based on the aggregate dollar amount of sales of securities transacted on the exchange. Given the specific language of Section 31, the Commission in the Adopting Release for Rules 31 and 31T advised that the current methodology for treating sales of securities that occur through ITS [7] was no longer appropriate and that ''it would be simpler and more transparent for each covered [self-regulatory organization (''SRO'')] to report all covered sales that occur on its market.'' The Commission further stated:

> The Commission acknowledges that a covered SRO on which a covered sale occurs as a result of an incoming ITS order may not be able to collect funds to pay the Section 31 fee from one of its own members. However, Section 31 does not address the manner or extent to which covered SROs may seek to recover the amounts that they pay pursuant to Section 31 from their members. Covered SROs may wish to devise new arrangements for passing fees between themselves so that the funds are collected from the covered SRO that originated the ITS order.[8]

The Commission further noted that any such arrangements devised by the SROs would have to be established pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

A subcommittee of the ITS Operating Committee [9] (''Subcommittee'') has had discussions in order to devise new arrangements for passing fees between the ITS participants that (1) were collected from their members for the months of September 2003 through August 2004; and (2) are being collected from their members beginning in September 2004 and continuing. This proposed rule change is being submitted by the Phlx with the understanding that the other exchanges participating in the proposed arrangement devised by the subcommittee will be submitting substantially similar rule change proposals.[10]

Pursuant to the new arrangement being proposed, each ITS participant exchange determines whether it has received and executed more in dollar value of covered sales than it has originated and sent to each other ITS participant exchange. For example, for the historical period, September 2003 through August 2004, SRO A sent ITS commitments for covered sales whose dollar value was $150 million to SRO B for execution. SRO A collected fees from its members to fund its Section 31 obligation for those covered sales executed on SRO B. SRO B, as the executing market center, is obligated to pay the Section 31 fee to the SEC. During the same period, SRO B sent ITS commitments for covered sales whose dollar value was $210 million to SRO A. SRO B collected fees from its members for those covered sales executed on SRO A. SRO A, as the executing market center, is obligated to pay the Section 31 fee to the SEC. Since SRO A executed a greater dollar value of covered sales from SRO B than it sent to SRO B, the proposed arrangement requires SRO A to determine the amount of the fees collected by SRO B from its members based on the aggregate dollar value of covered sales from SRO B and executed on SRO A through ITS commitments. When invoicing SRO B, SRO A will deduct the amount of the fee it owes to SRO B (*i.e.*, the fee amount based on SRO A's $210 million in aggregate covered sales less the fee amount based on SRO B's $150 million in aggregate covered sales) and will invoice only for the difference of $60 million.

[3] 15 U.S.C. 78ee.

[4] *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060 (July 7, 2004) (''Adopting Release'').

[5] 17 CFR 240.31(b)(5).

[6] As a result of this and other inaccuracies in the data reported by NSCC, the national securities exchanges were unable to report accurate information on Form R31, unless they made adjustments to the NSCC data based on data other than that provided by NSCC. On October 6, 2004, the Commission's Division of Market Regulation (''Division'') issued a ''no-action'' letter advising exchanges for whom NSCC acts as a designated clearing agency under Rule 31, that the Division staff would not recommend that the Commission take enforcement action if a national securities exchange adjusts the data provided by NSCC to accurately reflect covered sales occurring on the national securities exchange. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission to Ellen J. Neely, Senior Vice President and General Counsel, Chicago Stock Exchange, Inc. (''CHX''), dated October 6, 2004.

[7] In the Adopting Release, the Commission described the current methodology: ''SRO A sends an ITS commitment to a member of SRO B to sell a security, and the commitment is executed on SRO B. Under existing arrangements, SRO A pays the Section 31 fee arising from this trade and passes the fee to its member that initiated the trade. * * *[T]he SROs devised this system because SRO B does not have the ability to require members of SRO A to reimburse it for the cost of its Section 31 fees.'' Adopting Release, 69 FR at 41067.

[8] *Id.*

[9] The ITS participants are American Stock Exchange LLC, Boston Stock Exchange (''BSE''), Chicago Board Options Exchange, CHX, National Association of Securities Dealers (''NASD''), National Stock Exchange, New York Stock Exchange (''NYSE''), Pacific Exchange, and Phlx.

[10] NASD has determined not to participate in the arrangement for passing fees between exchanges although they participated in many of the conference calls regarding the proposed arrangement.

Once the fees have been invoiced and paid for the historical period, the ITS participant exchanges plan to use the same arrangement for the period beginning September 2004 and continuing. It is anticipated that the invoicing process will occur twice yearly to coincide with the March 15 and September 30 payment schedule for Section 31 fees set forth in the Act.

To implement this proposed arrangement, an ITS participant exchange will require access to the aggregate dollar value of buy and sell transactions occurring through ITS. Under the proposed arrangement for fees collected for the months of September 2003 through August 2004, an ITS participant exchange may choose to use data obtained from the Inter-market Surveillance Information System (''ISIS'') or data that provides comparable information that includes aggregate dollar value of ITS transactions.[11] The ISIS data is sorted by originating market center (*i.e.*, the sender of an ITS commitment) and receiving market center (*i.e.*, the market center that executes the ITS commitment). Using this data, each ITS participant exchange can determine on a monthly basis the dollar value of all executed commitments sent to and received from another ITS participant exchange.

At its meeting on February 23, 2005, the Subcommittee asked the Securities Industry Automation Corporation (''SIAC'') to determine the time and expense involved for SIAC to use the ITS database that it maintains to provide reports of the aggregate dollar value of buy and sell transactions occurring through ITS to the ITS participants. On March 15, 2005, representatives of the Subcommittee authorized SIAC to develop new reports. SIAC is in the process of developing these reports and expects to complete testing by August 31. 2005. Once SIAC can provide this data, it will no longer be necessary for ISIS data to be used. The new reports provided by SIAC will be used by ITS participants in connection with determining which ITS participant exchange will pay the fee for transactions occurring through ITS and which ITS participant exchange has collected the fee from its members.

The Phlx believes that the proposed arrangement is a fair and efficient means for passing fees collected at one ITS participant exchange based upon executions of covered sales occurring at another ITS participant exchange. The Phlx acknowledges that the legal duty to report and pay the Section 31 fee remains with the ITS participant on which the sale was in fact transacted.

2. Statutory Basis

This proposal would establish a process for SROs to enter into arrangements to pass fees they have collected from members for transactions executed on another SRO through ITS. For these reasons, the Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[13] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[14] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–64 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–64 and should be submitted on or before December 5, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[16] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its

[11] The NYSE has made available to the ITS participants spreadsheets for each month in the period using the ISIS data.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(4).

facilities. National securities exchanges obtain funds to pay their Section 31 fees to the Commission by charging fees to broker-dealers who generate the covered sales on which Section 31 fees are based. An exchange can obtain most of these funds by imposing a fee on one of its members whenever the member is on the sell side of a transaction. However, when the exchange accepts an ITS commitment to buy, the ultimate seller is a party on another market. The exchange lacks the ability to pass a fee to that seller directly, because the seller may not be a member of the exchange. Under the proposed arrangement, which the Commission understands will be adopted by each of the ITS participant exchanges,[17] the exchange that routed the ITS commitment away will continue to collect a fee from the broker-dealer that placed the sell order. Then, with respect to each ITS participant exchange, the exchange will determine whether it is a net sender or net receiver of ITS trades and send fees to or accept fees from each other exchange accordingly. The Commission believes this is an equitable manner for the exchanges to obtain funds to pay their Section 31 fees on covered sales resulting from ITS trades.

Under Section 19(b)(2) of the Act,[18] the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. In this case, the Commission does not believe a comment period is necessary because all of the parties affected by the proposed fee—the other ITS participant exchanges—have already consented to and will adopt the same fee arrangement.[19]

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.[20]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Phlx–2005–64) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6247 Filed 11–10–05; 8:45 am]

BILLING CODE 8010–01–P

[17] *See* letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, and Chairman, Subcommittee, to Michael Gaw, Assistant Director, Division, Commission, dated September 29, 2005.

[18] 15 U.S.C. 78s(b)(2).

[19] *See supra* note 17.

[20] *Id.*

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10224]

California Disaster # CA–00021 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 10/27/2005.

Incident: Lake Tahoe Sewage Spill.

Incident Period: 07/19/2005.

Effective Date: 10/27/2005.

EIDL Loan Application Deadline Date: 07/27/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration on 10/27/2005, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Placer

Contiguous Counties:
California
El Dorado, Nevada, Sacramento, Sutter, Yuba.
Nevada
Carson City, Douglas, Washoe.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 102240.

The States which received an EIDL Declaration # are California and Nevada.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: October 27, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–22535 Filed 11–10–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10205 and # 10206]

Louisiana Disaster Number LA–00004

AGENCY: Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1607–DR), dated 09/24/2005.

Incident: Hurricane Rita.

Incident Period: 09/23/2005 and continuing through 11/01/2005.

Effective Date: 11/01/2005.

Physical Loan Application Deadline Date: 01/11/2006.

EIDL Loan Application Deadline Date: 06/26/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Louisiana, dated 09/24/2005, is hereby amended to establish the incident period for this disaster as beginning 09/23/2005 and continuing through 11/01/2005.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–22533 Filed 11–10–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10176 and # 10177]

LOUISIANA Disaster Number LA–00002

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1603–DR), dated 08/29/2005.

Incident: Hurricane Katrina.

Incident Period: 08/29/2005 and continuing through 11/01/2005.

Effective Date: 11/01/2005.

Physical Loan Application Deadline Date: 01/11/2006.

EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth , TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Louisiana, dated 08/29/2005, is hereby amended to establish the incident period for this disaster as beginning 08/29/2005 and continuing through 11/01/2005.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–22534 Filed 11–10–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10240 and # 10241]

North Carolina Disaster # NC–00003

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of North Carolina, dated November 4, 2005.

Incident: Tropical Storm Tammy.

Incident Period: 10/07/2005 through 10/09/2005.

Effective Date: 11/04/2005.

Physical Loan Application Deadline Date: 01/03/2006.

EIDL Loan Application Deadline Date: 08/04/2006.

ADDRESSES: Submit completed loan applications to: Small Businesss Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Beaufort, Brunswick.

Contiguous Counties:

North Carolina:

Columbus, Martin, Pender, Craven, New Hanover, Pitt, Hyde, Pamlico, Washington.

South Carolina, Horry.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.375
Homeowners without credit available elsewhere	2.687
Businesses with credit available elsewhere	6.557
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10240 6 and for economic injury is 10241 0.

The States which received an EIDL Declaration # are North Carolina, South Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 4, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–22536 Filed 11–10–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10242 and # 10243]

North Carolina Disaster # NC–00002

AGENCY: Small Business Administration

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 11/04/2005.

Incident: Hurricane Ophelia.

Incident Period: 09/14/2005 through 09/23/5005.

Effective Date: 11/04/2005.

Physical Loan Application Deadline Date: 01/03/2006.

EIDL Loan Application Deadline Date: 08/04/2006.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, National Processing And Disbursement Center,14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Carteret

Contiguous Counties: North Carolina

Craven, Jones, Onslow, Pamlico

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	6.557
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10242 8 and for economic injury is 10243 0.

The States which received an EIDL Declaration # are North Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 4, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–22537 Filed 11–10–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5225]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gauguin and Impressionism''

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, Delegation of Authority No. 236 of October 19, 1999, 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 ''Gauguin and Impressionism,'' including a collateral work by Gauguin, Nave Nave Mahana, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on or about December 18, 2005 to on or about March 26, 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, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 1, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–22541 Filed 11–10–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5173]

Request for Proposals: Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII)

Summary: The Department of State invites organizations with substantial and wide-reaching experience in administering research and training programs to serve as intermediaries conducting nationwide competitive programs for scholars, students and institutions pertaining to advanced research and language training on the countries of Southeast Europe and Eurasia. U.S.-based public and private nonprofit organizations and educational institutions may submit proposals to carry out Title VIII-funded programs that (1) support and sustain American expertise on the countries of Eurasia and Southeast Europe, (2) bring American expertise to the service of the U.S. Government, and (3) further U.S. foreign assistance goals. The grants will be awarded through an open, merit-based competition. The purpose of this request for proposals is to inform potential applicant organizations of programmatic, procedural and funding information for the fiscal year 2006 Title VIII grants competition.

We request that applicants read the entire **Federal Register** announcement before addressing inquiries to the Title VIII Program Office or submitting a proposal. This notice contains three parts. Part I addresses Shipment and Deadline for Proposals. Part II consists of a Statement of Purpose and Program Priorities. Part III provides Funding Information for the program.

Authority: Grantmaking authority for the Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended) and is funded through the FREEDOM Support Act (FSA) of 1992 and Support for East European Democracy (SEED) Act of 1989.

Part I

Shipping and Deadline for Proposals: Due to security procedures proposals must be sent via a nationally recognized overnight delivery service (e.g., DHL, Federal Express, UPS, Airborne Express, or USPS Express Mail, etc.) or hand-delivered. Proposals may not be sent by regular U.S. Mail.

Proposals must have a postmark or invoice dated by Wednesday, January 11, 2006 and must be received within seven (7) days after the deadline. Hand-delivered proposals must be submitted no later than 4 p.m. on January 11, 2006. Faxed proposals will not be accepted at any time. Late applications will not be considered. It is the applicant's responsibility to ensure that proposals are delivered on time.

Address proposals to: Susie Baker, Title VIII Program Officer, U.S. Department of State, INR/RES, Room 2251, 2201 C Street, NW., Washington, DC 20520–6510.

Applications Delivered by Hand: Hand-delivered proposals will be accepted between 9 a.m. and 4 p.m. EST daily, except Saturdays, Sundays and Federal holidays. Proposals must be brought to the State Department's 21st Street entrance, just north of the intersection with C Street, NW. Contact the Title VIII Program office at (202) 736–4572 or (202) 647–0243 to arrange a delivery time.

Part II

Program Information: In the Soviet-Eastern European Research and Training Act of 1983 (Title VIII), the Congress declared that independently verified factual knowledge about the countries of that area is ''of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs.'' Congress also declared that the development and maintenance of such knowledge and expertise ''depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government.''

The Title VIII Program provides financial support for advanced research, graduate and language training and other related functions on the countries of the region. The program operates on a ''pass-through'' basis in that grantee organizations serve as intermediaries and conduct nationwide competitive programs to distribute grant funds to individual scholars, language students or universities. The program's goal is to support and sustain a cadre of U.S. experts by providing a full spectrum of financial assistance spanning the careers of scholars and students who have made, or are likely to make, a career commitment to the study of Southeast Europe and Eurasia. The Department of State's Title VIII Program Office brings this research and expertise to the service of the U.S. Government. The Title VIII Program also contributes to the overall objectives of the FREEDOM Support and SEED Acts through the Title VIII scholars' and students' participation in interactive educational and professional activities, volunteering, consulting, and other endeavors that further economic prosperity and mutual understanding in the region. The full purpose of the Title VIII Program and the eligibility requirements are set forth in Public Law 98–164, 97 Stat. 1047–50, as amended.

The following countries are eligible for funding under this request for proposals: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Republic of Macedonia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Russia, Serbia and Montenegro, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. Travel to certain countries may be subject to restrictions due to unforeseen world events, Congressional restrictions, U.S. embassy requirements, or general security concerns.

The Act established an Advisory Committee to recommend grant policies

and recipients. The Deputy Secretary of State, after consultation with the Advisory Committee, approves policies and makes the final determination on awards. Once the proposal submission deadline has passed, Title VIII Program staff and the Title VIII Advisory Committee may not discuss any aspect of this competition with applicants until after the proposal review and approval process has been completed.

Scope: The Title VIII legislation states that the program should develop a stable, long-term, national program of unclassified, advanced research and training on the countries of Eastern Europe and/or Eurasia. Applicants' proposals should outline programs that: (1) Support and sustain American expertise on the countries of Eurasia and Southeast Europe, (2) bring American expertise to the service of the U.S. Government, and (3) further U.S. foreign assistance goals.

Eligibility: U.S.-based public and private non-profit organizations and educational institutions with substantial and wide-reaching expertise in administering advanced research and training programs and conducting nationwide competitive programs for scholars, students and institutions pertaining to advanced research and language training on the countries of Southeast Europe and Eurasia and related fields may apply. To demonstrate eligibility, applicant organizations should describe their experience and expertise in each of the following:

- Conducting national, open, merit-based competitions for the purpose of distributing grant funds for advanced research and language training at the graduate level and above;
- Peer review mechanisms;
- Recruiting individuals who are likely to make a career commitment to the study of Eastern Europe and/or Eurasia;
- Federal grants policy and management.

NB: Individual scholars and students seeking Title VIII support should refer to the Title VIII Program Web site for funding opportunities: *http://www.state.gov/s/inr/grants.* Proposals from institutions or organizations to fund their own projects, *i.e.*, projects that are not national in scope and/or do not involve open, merit-based recruitment of participants will not be considered.

Guidelines: Programs proposed for this competition should be national in scope and may:

(1) Award contracts or grants to U.S. institutions of higher education or nonprofit organizations in support of post-doctoral or equivalent-level research projects, to be cost-shared with partner institutions;

(2) Offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Southeast Europe and Eurasia, and in related studies, including training in the languages of the region, to be cost-shared with partner institutions;

(3) Provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Southeast Europe and Eurasia, and in related studies;

(4) Facilitate research collaboration among U.S. scholars, the U.S. Government, and private specialists on Southeast Europe and Eurasia studies;

(5) Provide field-strengthening activities that stimulate interaction and sustained relationships among junior and senior scholars;

(6) Provide advanced training and research in the countries of Southeast Europe and Eurasia by facilitating access for American specialists to research facilities and resources in those countries;

(7) Facilitate the accessibility and dissemination of research findings, methods and data, and policy papers among U.S. Government agencies and the public;

(8) Strengthen the national capability for advanced research or training on the countries of Southeast Europe and Eurasia;

(9) Bring Title VIII scholarship to the service of the U.S. Government in ways not specified above.

In addition to the above guidelines, support for specific activities will be guided by the following policies and priorities:

- *Support for Transitions and U.S. Assistance Goals:* Program activities are strongly encouraged that build expertise among U.S. specialists on the region, and also: (1) Promote fundamental goals of U.S. foreign assistance programs such as establishing functioning market economies and promoting democratic governance and civil societies, and (2) provide knowledge to both U.S. and foreign audiences related to current U.S. policy interests in the region, broadly defined. This includes, but is not limited to, such topics as resolution of ethnic, religious, and other conflict; terrorism; transition economics; access to information; youth and women's issues; human rights; and citizen participation in politics and civil society. For overseas research, applicants are asked to propose effective means through which individual grant recipients' work may complement assistance activities in the region. Applicants are strongly encouraged to propose programs where grants for overseas work include a service component such as lecturing at a university or participating in workshops with host government and parliamentary officials, nongovernmental organizations, and other relevant audiences on issues related to transitions in the region.
- *Research Topics:* The Title VIII Program supports research topics that strengthen the fields of Eurasian and East European Studies (and related fields), and address U.S. policy interests in the region, broadly defined. Historical or cultural research that promotes understanding of current events in the region is acceptable if an explicit connection is made to policy relevant issues, broadly defined. Technical research in fields such as mathematics is not eligible for funding under Title VIII.
- *Regional Focus:* Priority will be given to programs that focus on gaps in knowledge on Central Asia, the Caucasus, Ukraine and Belarus, and the Balkans, especially the former Yugoslavia. The greater Central Asia region is critical in the global war on terrorism, therefore also eligible are proposals that incorporate a focus on ''Cross-Regional Issues'' and include specifically the countries of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and/or Uzbekistan, relative to their shared historical, ethnic, linguistic, political, economic, and cultural ties with such countries as Iraq, Iran, Afghanistan, Pakistan, Korea, China and Turkey.
- *Balanced National Program:* In making its recommendations, the Advisory Committee will seek to encourage a coherent, long-term and stable effort directed toward developing and maintaining a national capability on the countries of Southeast Europe and Eurasia. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will concern itself particularly with the development of a balanced national effort that will ensure attention to all eligible countries, as well as to the broad spectrum of students, scholars and researchers in various sectors and career stages.
- *Promoting Federal Service for Title VIII Grant Recipients:* Although the Title VIII Program does not require a federal service commitment for individuals receiving funding, the Advisory Committee urges grantees to encourage individuals receiving Title VIII funding to pursue U.S. Government

career opportunities, internships, or short-term sabbaticals after completing their awards, and to otherwise bring their research to the service of the U.S. Government. Grant recipient organizations are encouraged to: (1) Identify individuals for funding who have an interest in pursuing careers in the U.S. Government; and (2) provide opportunities for individuals in disciplines with Eurasian and/or Southeast European studies concentrations to serve on a temporary basis as a policy or other expert in U.S. Embassies, U.S. Government agencies and/or with NGOs in the region; and (3) provide opportunities for students and researchers to submit and present their research in a variety of formats, including policy briefs, white papers and policy forums. Applications proposing more productive interaction among U.S. Government agencies, universities and non-government organizations (NGOs) in the U.S. and overseas are strongly encouraged.

• *Publications:* Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications.

• *Conferences:* Proposals to fund conferences will be considered for funding only if the conference is an interactive, field-strengthening activity and if it is a component of a larger program with greater duration and scope. Conference panelists must be selected through an open, merit-based selection process. In addition, conference proposals will be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields, and will be competed and evaluated against research, fellowship or other proposals for achieving the objectives of this grant competition.

• *Language Support:* The Advisory Committee encourages a focus on the non-Russian languages of Eurasia and the less-commonly-taught languages of Southeast Europe. For Russian-language instruction and study, support may be provided only at the advanced level. Institutions seeking funding in order to offer language instruction are encouraged to apply to one or more of the national programs with appropriate peer review and selection mechanisms.

• *Support for Non-Americans:* The purpose of the program is to build and sustain U.S. expertise on the countries of Southeast Europe and Eurasia. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships (i.e., nine months or longer), should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the U.S. scholarly community and/or the U.S. Government. In such special instances, the applicant will be required to notify the Title VIII Program office prior to the activity and justify the expenditure by clearly describing the expected benefit to the field(s) and/or the U.S. Government. Despite this restriction, collaborative projects are encouraged—where the non-American component is funded from other sources—and priority is given to institutions whose programs contain such an international component.

• *Cost-sharing:* (1) Title VIII legislation requires cost-sharing for projects involving post-doctoral or equivalent-level research projects; and graduate, post-doctoral and teaching fellowships for advanced training or language studies for institutions or individuals. Cost sharing is strongly encouraged in all programs. (2) Research solely on, and/or travel to, the countries of ''greater Central Asia'' or Central and East Europe outside of Southeast Europe as outlined in this request for proposals, is not eligible for FSA or SEED funding. Proposals may include a plan to support research projects on, and travel to, countries eligible and ineligible for FSA or SEED funding, to address cross-border issues, regional or comparative studies, etc., in which case travel to ineligible countries would be cost-shared with funding from other sources. (3) All proposed cost sharing should be included in the budget request in a separate column, and explained in the budget notes. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching.

• *Program Data Requirements:* Organizations awarded grants will be required to provide data on program participants and activities in an electronically accessible format for the Title VIII Alumni Database. Requested information would include the following: Name; Institution; Address; Contact Information; Field(s) of Expertise; Type/Title of Award; Location(s) of Research, Fellowship, or other Activity; Research Products/Titles; Service to the U.S. Government; Contribution to U.S. Assistance Goals; etc.

• *Reporting and Funding Acknowledgement:* Successful applicants will be required to submit quarterly financial and program reports, and will be expected to acknowledge the Department of State and the Title VIII Program in all Title VIII-supported research products, advertising, recruitment tools, announcements, and other related electronic or written communications.

Applications

Application Format: Applicants must submit 15 copies of the proposal (a clearly marked original and 14 copies) in Times New Roman, 12-point font. The ''Executive Summary,'' ''Proposal Narrative,'' ''Budget Presentation'' and ''Resumes'' must be submitted on a PC-formatted disk or CD. Proposals should include the following elements:

TAB 1: SF424 ''Application for Federal Assistance'' and Cover Letter with primary point of contact for questions if different than ''Authorized Representative.'' SF424 is online: (*http://www.whitehouse.gov/omb/grants/sf424.pdf*);

TAB 2: Executive Summary (one page, single-spaced, see below);

TAB 3: Proposal Narrative (not to exceed 20 double-spaced pages), and calendar or timeline of major program activities;

TAB 4: Budget Presentation (Detailed Budget, Budget Notes, and Budget Summary—see below for explanation);

TAB 5: Resumes (one page each for key professional staff);

TAB 6: Letters of Support and/or Partnership; and

TAB 7: Certifications of Compliance with Federal Regulations (see below).

Applicants may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully.

Executive Summary: A one page, single-spaced summary to include: two separate dollar figures indicating the amount of funding requested for Eurasia and Southeast Europe, respectively; a list of each proposed program component in priority order; DUNS number; and any additional information the applicant wishes to provide.

Budget: Because funds will be appropriated separately for Southeast Europe (SEED) and Eurasia (FSA) programs, proposals and budgets must delineate how the requested funds will be distributed by region, country (to the extent possible), and activity. Successful grant recipients will be required to report expenditures by region, country and activity. Applicants must provide the following Budget Presentation

(budget templates are available by request from the Title VIII Program Office).

(1) Summary Budget, with one column each for the following: (1) DOS/Title VIII Costs; (2) Applicant Cost Sharing; (3) Third Party Cost Sharing, if applicable; and (4) Total Costs, with the following headings:

Southeast Europe (SEED)

Program Costs.
Administrative Costs.
TOTAL Southeast Europe.

Eurasia (FSA)

Program Costs.
Administrative Costs.
TOTAL Eurasia.

SEED + FSA Totals

TOTAL Program Costs (SEED + FSA).
TOTAL Administrative Costs (SEED + FSA).
(Percentage Of Total Admin Costs To Total Requested Funding:%).
TOTAL COSTS (SEED + FSA).

(2) Detailed Line-Item Budget with one column each for the following: (1) DOS/Title VIII Costs; (2) Applicant Cost Sharing; (3) Third Party Cost Sharing, if applicable; and (4) Total Costs. The budget must include the headings ''Program Costs'' and ''Administrative Costs,'' and both administrative and program costs must be listed separately according to region (Eurasia or Southeast Europe). Sub-budgets for each separate program component, phase, location or activity should be included to provide clarification. Administrative Costs include the following: ''Staff Requirements'' (each person/position should be listed as a separate line item as follows: Annual salary/12 months × percentage of time × number of months devoted to program), ''Benefits,'' ''Direct Costs,'' and ''Indirect Costs.'' Indirect costs are limited to 10 percent of total direct program costs. The ''Total Amount Requested'' should be the sum of the amount requested for Eurasia activities plus the amount requested for Southeast Europe activities.

(3) Budget Notes should clarify each line item, as necessary. Explain cost sharing with appropriate details and cross-references to the budget request.

(4) For applicants requesting funds to supplement a program having other sources of funding, submit a current budget for the total program and an estimated future budget for it, showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts should be identified.

(5) Append the most recent audit report (the most recent U.S. Government audit report, if available) and the name, address, and point of contact of the audit agency.

(6) Include a prioritized list of proposed programs if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the U.S. Government's Payment Management System (PMS). Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR 145, ''Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''; 22 CFR 137; OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''; and OMB Circular A–133, ''Audits of Institutions of Higher Learning and Other Non-Profit Institutions.'' Organizations can receive a DUNS number at no cost: call the toll-free DUNS Number request line at (866) 705–5711 or apply online at *http://www.dnb.com/us/duns_update/.*

Proposal Narrative: The Applicant must describe the proposed program(s), in no more than 20 double-spaced pages, including the benefits of these programs for the Southeast European and Eurasian fields, estimates of the types and amounts of anticipated awards, peer review procedures, recruitment plan for open, merit-based selection of participants with detailed information about advertising of program opportunities to eligible individuals and/or institutions, and anticipated selection committee participants. The narrative should address the applicant's plan to encourage policy relevant research, methods for dissemination of research products to academic and non-academic audiences, and plans for bringing Title VIII to the service of the U.S. Government, where applicable.

Applicants who have received previous grants from the Title VIII Program should provide the following detailed information: Names/affiliations of individual and institutional award recipients and amounts and types of awards from the past year; and a summary of the applicant's past grants under the Title VIII Program specifying both past and anticipated applicant to award ratios.

Proposals from national organizations involving language instruction programs should provide information on programs supported in the past year, including: Indications of progress achieved by Title VIII-funded students; criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, and methods for measuring language proficiency (including pre- and post-testing); instructors' qualifications; and budget information showing estimated costs per student.

Certifications: Applicants must include three Certifications of Compliance with Federal Regulations:

(a) Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals *http://foia.state.gov/forms/grants/ds2012.pdf;*

(b) Certification Regarding Debarment, Suspension and Other Responsibility Matters for Lower Tier and Primary Covered Transactions *http://foia.state.gov/forms/grants/ds2015.pdf;*

(c) New Restrictions on Lobbying *http://foia.state.gov/forms/grants/ds2018.pdf.*

Review Process: The program office, a grant review panel and the Title VIII Advisory Committee will review all eligible proposals. Proposals also may be reviewed by the Office of the Legal Advisor or by other Department elements. Final funding decisions are at the discretion of the Department of State's Deputy Secretary. Final technical authority for grants resides with the Department of State's Grants Officers.

Review Criteria: Technically eligible proposals will be competitively reviewed according to the following criteria:

(1) *Quality of the Program Idea:* Proposals should be responsive to the guidelines provided in this request for proposals, and should exhibit originality, substance, precision, and relevance to the State Department's mission, the legislation supporting the Title VIII Program, and the FREEDOM Support and SEED Acts.

(2) *Program Plan:* Program objectives should be stated clearly. Objectives should respond to priorities and address gaps in knowledge for particular fields and/or regions. A calendar or timeline of major program activities should be included. Responsibilities of partner organizations, if any, should be described clearly.

(3) *Institutional Capacity:* Proposed personnel and selection committees should be adequate and appropriate to achieve the program's goals. The proposal should reflect the applicant's expertise and knowledge in managing federal grants and in conducting national competitive award programs of the type the applicant proposes on the countries of Southeast Europe and/or Eurasia. Past performance of prior recipients and the demonstrated potential of new applicants will be considered, including both the ability to handle technical grants management

details and provide a superior-quality program.

(4) *Cost-Effectiveness and Cost Sharing:* Administrative costs in the proposal budget should be kept to a minimum. All other items should be necessary and appropriate. Proposals should maximize cost sharing, including in-kind assistance, through contributions from the applicant, partner organizations, as well as other private sector support. ''Applicant Cost-Sharing'' and ''Third Party Cost Sharing'' should be included as separate columns in the budget request. Proposal budgets that do not provide cost sharing will be deemed less competitive in this category.

(5) *Evaluation, Monitoring, Database, Reporting:* Proposals should include a plan to evaluate and monitor program successes and challenges. Methods for linking outcomes to program objectives are recommended. The proposal should address the applicant's willingness and ability to contribute to the alumni database.

Part III

Available Funds: Funding for this program is subject to final Congressional action and the appropriation of FY 2006 funds. In Fiscal Year 2005, the program was funded at $4.6 million from the FREEDOM Support and SEED Acts, which funded grants to eight national organizations. The number of awards may vary each year, depending on the level of funding and the quality of the applications submitted.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years after the grant's effective date.

The terms and conditions published in this Request for Proposals are binding and may not be modified by any Department representative. Issuance of the Request for Proposals does not constitute an award commitment on the part of the U.S. Government. The Department reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Further Information: For further information or to arrange a consultation, contact the Title VIII Program office at *TitleVIII@state.gov.*

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

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DEPARTMENT OF STATE

[Public Notice 5213]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: English Access Microscholarship Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/L–06–02.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: January 5, 2006.

Executive Summary: The English Access Microscholarship Program is designed to give non-elite, 14 to 18 year old students in countries with significant Muslim populations the opportunity to study English, to gain an appreciation for American culture and values, and to increase their ability to participate successfully in the socio-economic development of their countries. The microscholarships fund in-country study for classes close to the students' homes. While the English Access Microscholarship Program does not support study in the United States, the Program does provide for two Summer workshops, one for selected Directors and teachers and the other for selected students. In addition to providing quality instruction in the English language, all courses in which microscholarship students are enrolled must include significant U.S. content that gives the students insights into, and an appreciation for, American culture and values, and American democratic principles. Another important goal of the English Access Microscholarship Program is for a reasonable number of the students to acquire sufficient English language skills to be eligible to participate in traditional ECA exchange programs or other U.S. study opportunities.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the Program above is provided through legislation.

Pending availability of funds, it is anticipated that up to $8.75 million will be available to support this initiative in FY–2006. Middle East Partnership Initiative (MEPI) funds will be used to support the Program in the Near East/North Africa region, where allowable (i.e., all but Syria, Iraq, Libya.) The Program may expand significantly in FY–2007.

Purpose: The English Access Microscholarship Program gives non-elite, 14 to 18 year old students in countries with significant Muslim populations the opportunity to study English, to gain an appreciation for American culture and values, and to increase their ability to participate successfully in the socio-economic development of their countries. The Bureau of Educational and Cultural Affairs' Office of English Language Programs (ECA/A/L), based on input from U.S. Embassies' Public Affairs sections, designates the schools or other educational service providers that conduct the classes. (Note: Throughout this Request for Grant Proposals, these schools, NGOs and other partners will be referred to as ''in-country educational service providers.'') The Embassies select the students to receive microscholarships. The microscholarships fund in-country study for classes close to the students' homes. English Access Microscholarships do not support study in the United States. Because of the Program's worldwide scope, the method of instruction, curriculum, textbooks, tests, hours of instruction, cost per student, and other program elements may vary considerably from country to country, and sometimes within a single country.

Background: In FY–2004 the Department of State launched the English Access Microscholarship Program as a pilot Program in most of the countries of the Bureau of Near

Eastern Affairs. The Bureau of Educational and Cultural Affairs subsequently expanded the pilot Program to include countries with significant Muslim populations beyond the Near East region. Under the pilot phase, over 9,000 students in 44 countries enrolled in the Program. The Program currently is operating in Algeria, Bahrain, Gaza, Israel, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, West Bank, Yemen, Benin, Burkina Faso, Chad, Congo, the Democratic Republic of Congo, Kenya, Mozambique, Niger, Nigeria, Senegal, Tanzania, Togo, Afghanistan, Bangladesh, India, Pakistan, Cambodia, Indonesia, Malaysia, Thailand, Bosnia Herzegovina, Russia, Tajikistan, Turkey, Turkmenistan, and Uzbekistan.

Program Goals: In addition to providing quality instruction in the English language, all courses in which microscholarship students are enrolled are required to have adequate and appropriate content to give the students insights into, and an appreciation for, American culture and values. Another important goal of the English Access Microscholarship Program is for a reasonable number of the students to acquire sufficient English language skills to be eligible to participate in traditional ECA exchange programs or other U.S. study opportunities.

Cooperative-agreement recipient Responsibilities: The cooperative-agreement recipient organization that is awarded the English Access Microscholarship Program cooperative-agreement from the Bureau will be responsible for the following activities:

1. Disbursing funds to in-country educational service providers in each of the participating countries. The in-country educational service providers are schools, NGOs or other educational providers selected by U.S. Embassies to enroll the microscholarship students. The amounts to be disbursed, as well as the in-country educational service providers, are determined by ECA/A/L in consultation with U.S. Embassies and the State Department's regional bureaus' Public Diplomacy offices.

Note: Selection of the in-country educational service provider(s) in each country must be approved in writing by both the U.S. Embassy and ECA/A/L. The Embassy must ensure that the selection process is transparent and competitive, detailing in writing to ECA/A/L the steps it has taken to render it such. If the cooperative-agreement recipient organization also is selected by an Embassy to be an in-country educational service provider, strict internal financial and management procedures must be established to ensure that the two roles are distinct. For example, separate accounts must be established to preclude co-mingling of funds, separate support staff must be maintained, etc.

Ideally, the cooperative-agreement recipient makes one disbursement to each in-country educational service provider per year, but ECA/A/L may authorize additional disbursements as necessary based on program requirements. Individual disbursements to in-country educational service providers will vary in size depending on the size of the Program in each country, ranging from a few thousand dollars up to several hundred thousand dollars per in-country educational service provider.

Additionally, the cooperative-agreement recipient, under the close supervision of with ECA/A/L, will:

2. Plan, conduct, and fund a two-week workshop in the U.S. for approximately 12–15 (twelve to fifteen) teachers and directors of the Program, chosen by ECA/A/L from nominations by Embassies. The workshop will focus on developing ''best practices'' managerial and pedagogical recommendations.

3. Plan, conduct, and fund a three-week workshop in the U.S. for approximately 20–25 (twenty to twenty-five) English Access Microscholarship Program students, chosen by ECA/A/L from nominations by Embassies. The workshop will focus on giving the students an immersion experience in American culture and the English language and will entail travel to several cities and diverse regions in the United States.

4. Develop and maintain a secure, limited-access database containing relevant program information for English Access Microscholarship students and in-country educational service providers. Database information on each student will include: His/her name, age, grade in school, contact information, nationality, gender, test scores, hours of instruction received, educational institution/in-country educational service provider, cost per hour of instruction, date enrolled, date graduated, participation in other USG-funded programs, etc. Database information on each in-country educational service provider will include: Contact information for the director; name of each teacher employed, his/her educational background and contact information (address, e-mail, etc.); course start and end dates; running, quarterly, and yearly cost totals for program countries, in-country educational service providers, and courses; etc. The database also will include additional information as identified by ECA/A/L, such as details of corporate and/or private partnership support for the Program. The cooperative-agreement recipient will submit quarterly and end-of-year reports (soft and hard copies) of database information in EXCEL spreadsheet format to ECA/A/L.

Cooperative Agreement: In a cooperative agreement, ECA/A/L is substantially involved in the program activities, above and beyond routine grant monitoring. ECA/A/L activities and responsibilities for this Program are as follows:

—Selects, based on input from U.S. Embassies and the State Department's regional bureaus' public diplomacy offices, the students who receive the microscholarships;

—Selects, based on input from U.S. Embassies and the State Department's regional bureaus' public diplomacy offices, the in-country educational service providers (schools, NGOs, in-country educational service providers, etc.) that will provide English language instruction to the microscholarship students;

—Determines, based on input from U.S. Embassies and the State Department's regional bureaus' public diplomacy offices, the amount and timing of financial disbursements by the cooperative-agreement recipient to the in-country educational service providers;

—Serves, except for routine disbursements and other transactions approved in advance by ECA/A/L, as the cooperative-agreement recipient's primary point of contact and intermediary with the in-country educational service providers and teachers involved in the Program. Similarly, ECA/A/L serves as the primary point of contact and intermediary with the U.S. Embassies and students involved in the Program.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this Program is listed under number I above.

Fiscal Year Funds: 2006.

Approximate Total Funding: Pending availability of funds, $8.75 million, $4 million from the FY–2006 Exchanges Appropriation and up to $4.75 million from a transfer from the State Department Middle East Partnership Initiative (MEPI).

Approximate Number of Awards: One.

Approximate Average Award: $8.75 million.

Floor of Award Range: $4 million.

Ceiling of Award Range: $8.75 million.

Anticipated Award Date: Pending availability of funds, March 15, 2006.

Anticipated Project Completion Date: March 15, 2007.

Additional Information: Pending successful implementation of this Program, and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant/cooperative-agreement for two additional fiscal years, before openly competing it again. Subsequent grants may include activities to extend the Program to other countries with young, non-elite students throughout the world. Subsequent grants will not include start up costs for certain activities described in this RFGP and the Project Objectives, Goals, and Implementation (POGI) as being completed in FY06.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds; Minimizing indirect costs: Although there is no minimum or maximum percentage required for this competition, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. We also ask that proposals minimize the inclusion of indirect costs as a component of institutional cost sharing.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs, and, as stated above, the Bureau encourages proposals that minimize indirect costs in this calculation. For accountability, the cooperative-agreement recipient must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the cooperative-agreement recipient does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $8.75 million to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the Office of English Language Programs, ECA/A/L, Room 304, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 453–8843, fax (202) 453–8854, e-mail: *uzarskij@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/L–06–02 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Ms. Joëlle Uzarski and refer to the Funding Opportunity Number ECA/A/L–06–02 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and 15 copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document—and the Project Objectives, Goals and Implementation (POGI) document—for additional formatting and technical requirements.

IV.3c. An applicant must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J Visa: The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The cooperative-agreement recipient will be responsible for issuing DS–2019 forms to foreign participants in this Program traveling to the United States.

A copy of the complete regulations governing the administration of

Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW.,Washington, DC 20547. Telephone: (202) 203–5029. FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the Program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives, capturing data regarding hours of instruction, costs per hour of instruction, student-teacher ratios, teacher qualifications, significant program enhancements, textbook types, student placement and achievement test scores, impact of American-based curriculum on students' attitudes and activities, etc.

The Bureau specifically recommends that applicants submit a plan and budget for both of the two-week workshops to be conducted under the terms of this cooperative-agreement: a workshop in the U.S. for approximately 12–15 (twelve to fifteen) teachers and directors of overseas English Access Microscholarship Program in-country educational service providers to be selected by ECA/A/L; and a three-week workshop in the U.S. for approximately 20–25 (twenty to twenty-five) English Access Microscholarship Program students focusing on American culture and the English language. ECA/A/L will closely supervise the cooperative-agreement recipient's activities in the development of these plans and will have final approval authority of same.

The Bureau expects that the cooperative-agreement recipient will track data regarding microscholarship recipients and in-country educational service providers and be able to respond to key evaluation questions, including satisfaction with the Program, learning as a result of the Program, changes in attitude and behavior as a result of the Program, and effects of the Program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the Program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the Program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: *i.e.* sustainability, overall program management, staffing, coordination with ECA and U.S. Embassies public affairs sections, or any other requirements etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire Program (not to exceed $8.75 million). There must be a summary budget as well as breakdowns reflecting both

administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the Program include the following: The Bureau's goal is to maximize the number of microscholarships being made available and expects that approximately 85 (eighty-five) percent or more of the funds provided through this grant will be used for issuance of microscholarships and for implementation of other mandatory program elements described under section 1 of this RFGP.

(1) Administrative costs may include staff salaries, including staff to carry out develop and maintain the database and plan and conduct the workshop aspects/elements of the Program, including the Program Monitoring and Evaluation in IV.3d.3. of the RFGP.

(2) Travel costs should include two visits by the cooperative-agreement recipient's project director or appropriate designee to in-country educational service providers in ''benchmark'' countries to monitor the Program, one in the Middle East and one in another region, to be determined and conducted in consultation and coordination with ECA/A/L.

(3) The budget for planning, conducting and funding the two workshops—one for Program Directors and teachers, and the other for Program students—should include: the participants' international and domestic transportation, U.S. per diem, space rental, workshop materials, etc. For travel budgeting purposes, at least half of the participants likely will be from countries in the State Department's Bureau of Near Eastern Affairs (NEA).

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times:

Application Deadline Date: January 5, 2006.

Explanation of Deadlines:

Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will not notify you upon receipt of application. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 15 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/L–06–02, Program Management, ECA/EX/PM, Room 534, 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as Public Diplomacy sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the Program overview and guidelines described above.

3. Ability to achieve Program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the Program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the Program's goals, and should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the Program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

9. Cost sharing: Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. We also ask that proposals minimize the inclusion of indirect costs as a component of institutional cost sharing. See also IV.3e.2 in this RFGP regarding cost sharing.

10. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by the U.S. Department of State's regional public diplomacy and country desks and overseas officers of program need, potential impact, and significance in the partner country(ies).

VI. Award Administration Information

VI.1a. Award Notices:

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants, http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original, two copies of same, and an electronic copy on disc in EXCEL and WORD formats of the following reports:

Mandatory:

(1.) A final program and financial report no more than 90 days after the expiration of the award including the information detailed in VI.3.2 below;

(2.) Quarterly program and financial reports in WORD and EXCEL formats (soft and hard copies) including contact information and total dollars awarded to each in-country partner organization, hours of student instruction, costs per hour of instruction, student-teacher ratios, teacher qualifications, significant program enhancements, textbook types, student placement and achievement test scores, and other data outlined in IV.3d.3. above and VI.4 below.

(3.) A summary report of any program-related travel.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in a secure, limited-access, electronically accessible database format that can be shared with the Bureau as required. At a minimum, the data must include the following:

(1) Name, address, contact information, and other data specified by ECA/A/L for all persons who receive an English Access Microscholarship, to be provided to the cooperative-agreement recipient by in-country educational service providers. See also specific data requirements as outlined in VI.3.2.

(2) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(3) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Ms. Joëlle Uzarski, Office of English Language Programs, ECA/A/L, Room 304, ECA/A/L–06–02, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 453–8854, fax (202) 453–8858, e-mail: *uzarskij@state.gov.* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/L–06–02

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the Program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 2, 2005.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–22459 Filed 11–10–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5224]

International Joint Commission Announcement of Public Meetings

Review of the Great Lakes Water Quality Agreement

The governments of the United States and Canada have asked the International Joint Commission (IJC) to consult with the residents of the Great Lakes and St. Lawrence River basin to find out their views on what needs to be done to protect water quality in their area, and on the future of the Great Lakes Water Quality Agreement.

The Great Lakes Water Quality Agreement between Canada and the United States expresses the commitment of each country to restore and maintain the chemical, physical and biological integrity of the waters of the Great Lakes basin ecosystem, including the international portion of the St. Lawrence River.

The governments intend to launch a review of the operation and effectiveness of the Agreement in early 2006. The Agreement was first signed in 1972 and last amended in 1987.

The International Joint Commission is holding 14 public meetings across the Great Lakes and St. Lawrence River basin, conducting a Web Dialogue from November 29 to December 2 and accepting written and oral submissions until November 30. For more information, call toll-free at 1 866 813–0642 or visit *http://www.ijc.org/glconsultations.*

- Monday, October 17 at 7 p.m. in Montréal, Quebec, at City Hall, 275 Notre-Dame Street East
- Monday, October 24 at 7 p.m. in Duluth, Minnesota, at the Central Hillside Community Center, 12 East 4th Street
- Tuesday, October 25 at 7 p.m. in Thunder Bay, Ontario, at City Hall, 500 Donald Street East
- Thursday, October 27 at 7 p.m. in Sault Ste Marie, Ontario, in the City Council Chamber at the Civic Centre, 99 Foster Drive
- Tuesday, November 1 at 7 p.m. in Bay City, Michigan, at City Hall, 301 Washington Avenue
- Tuesday, November 1 at 7 p.m. in Green Bay, Wisconsin, at the KI Convention Center, 333 Main Street
- Wednesday, November 2 at 7 p.m. in Chicago, Illinois, in the Phelps Auditorium at the Shedd Aquarium, 1200 South Lake Shore Drive
- Wednesday, November 2 at 3 p.m. in Detroit, Michigan, at the Detroit Regional Chamber of Commerce, One Woodward Avenue, Suite 1900
- Wednesday, November 2 at 7 p.m. in Windsor, Ontario, at the Cleary International Centre, 201 Riverside Drive West
- Thursday, November 3, at 7 p.m. in Cleveland, Ohio, in the Rotunda of City Hall, 601 Lakeside Avenue
- Tuesday, November 8 at 7 p.m. in Quebec City, Quebec, at City Hall, 2 rue des Jardins
- Tuesday, November 8 at 7 p.m. in Midland, Ontario, in the Council Chamber at the Municipal Building, 575 Dominion Avenue
- Wednesday, November 9 at 7 p.m. in Toronto, Ontario, at City Hall, 100 Queen Street West
- Thursday, November 10 at 7:30 p.m. in Rochester, New York, in the City Council Chambers at City Hall, 30 Church Street

Dated: November 7, 2005.

Elizabeth C. Bourget,

Secretary, United States Section, International Joint Commission, Department of State.

[FR Doc. 05–22542 Filed 11–10–05; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 2005–22114]

RIN 2105–AD53

Standard Time Zone Boundary in the State of Indiana

AGENCY: Office of the Secretary (OST), the Department of Transportation (DOT).

ACTION: Notice of public hearings.

SUMMARY: To gather information concerning the effects of changing time zone boundaries in Indiana, DOT is holding four public hearings. This notice provides the dates, times, locations, and agenda for these public hearings. The objective of the hearings is to provide State and local government representatives and the public an opportunity to comment on DOT's proposal concerning the time zone boundary in 18 Indiana counties. To aid us in our consideration of whether a time zone change would be ''for the convenience of commerce,'' which is the standard Congress established for these matters, DOT seeks comments on how the time zone change impacts on such things as economic, cultural, social, and civic activities and how time zone changes affect businesses, communication, transportation, and education.

DATES: The hearing in Logansport will be held on November 13 from 2:30 pm to 6:30 pm; in Terre Haute on November 14 from 5 p.m. to 10 p.m.; in Jasper on November 16 from 6 p.m. to 10 p.m., and in South Bend on November 21, 2005 from 5 p.m. to 10 p.m. To help us prepare for the meeting, all State and local government representatives must register in order to ensure an opportunity to speak at the hearings by November 10, 2005. If anyone needs a sign language interpreter, please let us know as soon as possible. To register or to request an interpreter for the hearings, please send an e-mail message to *indianatime@dot.gov* or call (202) 366–9283 and identify the hearing location at which you wish to speak. As announced previously, all written comments should be received by November 30, 2005, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The public hearings will be held at the following locations:

- McHale Performing Arts Center, Logansport Community High School, 1 Berry Lane, Logansport, IN 46947. Phone: 574–753–4116 (*http://mchalepac.lcsc.k12.in.us*)
- Hulman Center Meeting Room Complex, Indiana State University, 200 North Eighth Street, (corner of 9th and Cherry Street) Terre Haute, IN 47809. Phone: 812–237–3770 (*http://indstate.edu*)
- Jasper Arts Center, 951 College Avenue, Jasper, IN 47546 (adjacent to Vincennes University, Jasper Campus) Phone: 812–482–3070 (*http://www.jasperindiana.gov*)
- Student Activity Center, Indiana University, South Bend Campus, 1700 Mishawaka Avenue, South Bend, IN 46634 Phone: 574–520–4872 (*http://www.iusb.edu/maps*)

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, Washington, DC 20590, *indianatime@dot.gov;* (202) 366–9306.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on October 31, 2005, (70 FR 62288), DOT tentatively proposed to move St. Joseph, Starke, Knox, Pike, and Perry Counties from the eastern time zone to the central time zone. DOT also tentatively proposed not to change the time zone boundary for Marshall, Pulaski, Fulton, Benton, White, Carroll, Cass, Vermillion, Sullivan, Daviess, Dubois, Martin, and Lawrence Counties, leaving them in the eastern time zone. The

notice also announced that DOT intended to hold public hearings on its proposal.

Public Hearing

In addition to the opportunity to provide written comments, DOT is providing an opportunity for State and local government representatives and the public to comment on our proposal concerning Indiana time zone boundary changes at four public hearings in Jasper, Logansport, South Bend, and Terre Haute. These hearings will be chaired by a representative of DOT.

The DOT representative will describe the process that DOT uses to set time zone boundaries. There will be an opportunity for clarifying questions on her remarks. This will be followed by presentations by county government representatives who have requested an opportunity to speak. If the government representative is speaking on behalf of a county that petitioned for a change to the county time zone boundary, he or she has been asked to explain how the change would be for the convenience of commerce. After these presentations, other State and local government representatives will have an opportunity to comment, followed by the public. The DOT representative will attempt to provide an opportunity to speak for all those wishing to do so. To accommodate all interested speakers, the DOT representative may have to establish some time limits or other approaches for comment. For example, the DOT representative may provide an opportunity for citizens with like views to meet and collaborate on providing a joint statement.

The hearings will be informal and will be tape-recorded for inclusion in the docket.

''For the Convenience of Commerce''

The principal standard for deciding whether to change a time zone is ''for the convenience of commerce.'' This term is defined very broadly to include consideration of all the impacts upon a community of a change in its time zone. We have requested that counties seeking a change address, at a minimum, each of the following questions in as much detail as possible.

1. From where do businesses in the community get their supplies, and to where do they ship their goods or products?
2. From where does the community receive television and radio broadcasts?
3. Where are the newspapers published that serve the community?
4. From where does the community get its bus and passenger rail services; if there is no scheduled bus or passenger rail service in the community to where must residents go to obtain these services?
5. Where is the nearest airport; if it is a local service airport, to what major airport does it carry passengers?
6. What percentage of residents of the community work outside the community; where do these residents work?
7. What are the major elements of the community's economy; is the community's economy improving or declining; what Federal, State, or local plans, if any, are there for economic development in the community?
8. If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes?

To aid us in our consideration of whether a time zone change would be ''for the convenience of commerce,'' we ask that all those who speak at the public hearing comment on the impact on commerce of a change in the time zone and whether and how a new time zone would improve the convenience of commerce. The comments should address the impact on such things as economic, cultural, social, and civic activities and how a time zone change would affect businesses, communication, transportation, and education. The comments should be as detailed as possible, providing the basis of the information including factual data or surveys.

We will consider any other information that the county or local officials or the public believe to be relevant to the proceeding.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05–22518 Filed 11–8–05; 11:45am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Update for Lehigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Lehigh-Northampton Airport Authority under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On May 14, 2004 the FAA determined that the noise exposure maps submitted by the Lehigh-Northampton Airport Authority under Part 150 were in compliance with applicable requirements. On October 7, 2005, the FAA approved the Lehigh Valley International Airport's updated noise compatibility program. Most of the recommendations of the program update were approved. One program element relating to revised flight procedures for noise abatement was proposed by the airport operator and was approved in part, as a voluntary measure, and disapproved in part. Only one noise abatement element was disapproved for purposes of Part 150 pending submission of additional information needed to make an informed analysis. The Lehigh-Northampton Airport Authority has also requested under FAR Part 150, section 150.35(f), that FAA determine that the revised five-year forecast condition NEM submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program is in compliance with applicable requirements of FAR Part 150. The FAA announces its determination that the revised five-year forecast condition NEW for the Lehigh Valley International Airport for the year 2008 submitted with the noise compatibility program is in compliance with applicable requirements of FAR Part 150 effective October 31, 2005. The documentation that constitutes the revised five-year forecast condition NEM as defined in §§ 150.7 and 150.101(e) of Part 150 includes but is not limited to: Sections 2.2 and 2.3, Figure 3, and Table 3 in the NCP Update, and Figure 11 and Figures 36 through 45 in the NEM volume. The FAA has determined that this revised five-year forecast condition NEM and accompanying documentation are in compliance with applicable requirements.

DATES: The effective date of the FAA's approval of the Lehigh Valley International Airport's noise compatibility program update is October 7, 2005. The effective date of the FAA's determination on the revised five-year forecast condition NEM is October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Edward S. Gabsewics, CEP, Environmental Protection Specialist, Federal Aviation Administration,

Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, Telephone 717–730–2832. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program update for the Lehigh Valley International Airport, effective October 7, 2005, and that the revised five-year forecast condition NEM for 2008 for this same airport is determined to be in compliance with applicable requirement of FAR Part 150.

A. Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Camp Hill, Pennsylvania.

In December 2003, the Lehigh-Northampton Airport Authority submitted its updated noise exposure maps to the FAA along with descriptions and other documentation produced during the noise compatibility planning study initiated in 2002. The Lehigh Valley International Airport's updated noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 14, 2004. Notice of this determination was published in the **Federal Register** on May 28, 2004.

The Lehigh Valley International Airport study contains a proposed noise compatibility program update comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from 2005 to 2008. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on April 12, 2005 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted noise compatibility program update contained twenty proposed actions for noise mitigation (six noise abatement elements, five lands use elements, and nine implementation program elements). The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective October 7, 2005.

Approval was granted in whole or in part for nineteen of the twenty proposed action elements in the noise compatibility program update. Three elements were approved as voluntary measures and one was approved in part as a voluntary measure and disapproved in part. Only one element was disapproved for Part 150 purposes.

Noise abatement element 2 (recommending an amendment to the existing FAA-approved voluntary NCP measure which calls for the ATCT to assign Runway 31 departures a turn to a 360 degree heading as soon as practical) was disapproved in part based on concerns voiced by the ATCT. Noise abatement element 5 was disapproved for purposes of Part 150 pending submission of additional information to make an informed analysis about its noise benefits.

These determinations are set forth in detail in a Record of Approval signed by the Associate Administrator for Airports on October 7, 2005. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Lehigh-Northampton Airport Authority. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm*.

B. The FAA also has completed its review of the revised five-year forecast condition NEM and related descriptions submitted by Lehigh-Northampton Airport Authority. The specific map under consideration is included in the NCP Update submission as Figure 3. This map is supported by Sections 2.2 and 2.3, Figure 3, and Table 3 in the NCP Update, and Figure 11 and Figures 36 through 45 in the NEM volume. The FAA has determined that this revised five-year forecast condition NEM map for the Lehigh Valley International Airport is in compliance with applicable requirements. This determination is effective on October 31, 2005. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the revised five-year forecast condition NEM and of the FAA's evaluation of the revised NEM, and copies of the record of approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations:

Federal Aviation Administration Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011 and Lehigh-Northampton Airport Authority, 3311 Airport Road, Allentown, PA 18109.

Questions on either of these FAA determinations may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: Issued in Camp Hill, Pennsylvania, October 31, 2005.

Wayne T. Heibeck,

Manager, Harrisburg Airports District Office.

[FR Doc. 05–22492 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Collin County Regional Airport, McKinney, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of McKinney, Texas for Collin County Regional Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Collin County Regional Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before April 30, 2006.

DATES: The effective date of the FAA's determination on the noise exposure maps and start of its review of the associated noise compatibility program is November 1, 2005. The public comment period ends December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Blackford, Texas Airports Development Office, Federal Aviation Administration, 2601 Meachum Blvd., Fort Worth, Texas 76137–4298, (817) 222–5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Collin County Regional Airport are in compliance with applicable requirements of Part 150, effective November 1, 2005. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before April 30, 2006. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

City of McKinney, Texas submitted to the FAA on October 3, 2005, noise exposure maps, descriptions and other documentation that were produced during the Collin County Regional Airport, 14 CFR Part 150 Study, April, 2003 to October, 2005. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of McKinney, Texas. The specific documentation determined to constitute the noise exposure maps includes: Map A–2005 Noise Exposure Map, Map B–2011 Noise Exposure Map, Map C–2005 and 2011 North Flow Centerline of Flight Corridors, Map D–2005 and 2011 South Flow Centerline of Flight Corridors, Section 5–Airport Operational Data, and Section 6—Noise Exposure. The FAA has determined that these maps for Collin County Regional Airport are in compliance with applicable requirements. This determination is effective on November 1, 2005. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the

Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Collin County Regional Airport, also effective on November 1, 2005. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 30, 2006.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Texas Airports Development Office, 2601 Meacham Blvd., Fort Worth, Texas 76137. Collin County Regional Airport, 1500 E. Industrial Blvd., Suite 118, McKinney, Texas 75069.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, November 1, 2005.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 05–22522 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Steve Healow, Project Development Engineer, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, California 95814–4708, Telephone: (916) 498–5849, or Jason A. Reynolds, Environmental Analysis–Branch A, at the California Department of Transportation, District 11, 2829 Juan Street, MS 46, San Diego, California 92110, Telephone: (858) 616–6609.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation will prepare an environmental Impact Statement (EIS) on a proposed project to upgrade and improve operations on State Route 76, from the vicinity of Melrose Drive to the vicinity of south Mission Road, in San Diego County, California. The proposed improvements would address traffic flow and safety issues by building additional traffic lanes, upgrade the roadway to current design standards, and improve intersections. These improvements are considered necessary to provide for the increase in existing and projected traffic demand. Preliminary alternatives under consideration include: (1) Taking no action; (2) construct improvements along the existing roadway; (3) construct a new alignment to the south; (4) construct a split facility utilizing the existing roadway and the proposed Southern route.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

During future project development, prior to draft EIS circulation, a public scoping meeting may be held if significant new circumstances or information arise which bear on the proposed project or its impacts. A public hearing will be held after publication of the draft EIS. Public notice will be given regarding the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS/EIR should be directed to the FHWA at the provided above.

Issued on: October 19, 2005.

Steve Healow,

FHWA Project Development Engineer, Sacramento, California.

[FR Doc. 05–22514 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Elderly Individuals and Individuals With Disabilities Pilot Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; Solicitation of Proposals to Participate in the Elderly Individuals and Individuals with Disabilities Pilot Program.

SUMMARY: This solicitation is for proposals from states that would like to use a portion of their Section 5310 Elderly Individuals and Individuals with Disabilities Program funds for operating expenses.

DATES: Complete proposals must be submitted to FTA by the close of business December 14, 2005.

ADDRESSES: Proposals must be submitted electronically to *cheryl.oliver@fta.dot.gov* and *marymartha.churchman@fta.dot.gov.* The subject line of the e-mail should read: Proposal for Section 5310 Pilot Program.

FOR FURTHER INFORMATION: Contact Cheryl Oliver, Office of Program

Management, (202) 366–2053, e-mail: *cheryl.oliver@fta.dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Program Information
II. Guidelines for Preparing and Submitting Proposals
III. Proposal Review, Selection, and Notification

I. General Program Information

A. Authority

The Elderly Individuals and Individuals with Disabilities Pilot Program is authorized under Section 3012(b) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU). This section establishes a pilot program allowing seven states to use not more than 33 percent of their FY 2006–2009 Section 5310 Elderly Individuals and Individuals with Disabilities Program annual apportionments for operating costs associated with transportation projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities. Four of the seven states are named in SAFETEA–LU: Wisconsin, Alaska, Minnesota, and Oregon. Three other states will be selected to participate in the pilot program from among the proposals submitted in response to this solicitation. All states wishing to use not more than 33 percent of their annual Section 5310 apportionments, including those states named in the legislation, must submit a proposal.

B. Background

Section 5310 Elderly Individuals and Individuals with Disabilities Program funds have historically been available only for capital purposes. Funds have traditionally been used for purchasing vehicles, although some states use Section 5310 funds for contracted service, eligible as a capital expense under the program in order to assess the feasibility of using Section 5310 for operating purposes. The Elderly Individuals and Individuals with Disabilities Pilot Program allows operating expenses to be funded on a limited basis. Seven states may use a portion of their FY 2006–2009 Section 5310 annual apportionments for operating expenses.

C. Eligible Applicants

Each of the four states named in SAFETEA-LU (Wisconsin, Alaska, Minnesota, and Oregon) and any other states interested in using not more than 33 percent of their Section 5310 funds for operating must submit a proposal. Any of the states named in the legislation that choose to use none of their Section 5310 funds for operating purposes need only submit a statement to that effect by the proposal deadline.

D. Eligible Expenses

Operating expenses are considered those costs directly related to system operations, such as fuel, oil, driver and dispatcher salaries and fringe benefits, and licenses. Net operating expenses are those expenses that remain after operating revenues are subtracted from eligible operating expenses. At a minimum, operating revenues must include fare-box revenues. States may further define what constitutes operating revenues. Fare-box revenues include fares paid by riders who are later reimbursed by a human service agency, or other user-side subsidy arrangements.

E. Matching Requirements

The Federal share for net operating expenses may not exceed 50 percent. All local and state revenues generally are eligible for inclusion in the local match with the exception of farebox and farebox-related revenues. Federal funds (other than Department of Transportation funds, with the exception of Federal lands highway funds) that are eligible to be expended for transportation may be used to match Section 5310 funds. Payments made directly to the transit provider by human service agencies may also be used as match.

F. Proposal Evaluation Criteria

Proposals from the states identified in SAFETEA-LU (Wisconsin, Alaska, Minnesota, and Oregon), as well as all other states interested in using not more than 33 percent or less of their funds for operating expenses, will be evaluated on the degree to which the state has undertaken initiatives that advance coordination, such as:

- Conducted a statewide assessment of current needs, resources and services related to human service transportation using the United We Ride Framework for Action.
- Developed action plans that improve coordination of human service transportation for individuals with disabilities, older adults, and persons with lower incomes.
- Implemented a statewide interagency transit pass program.
- Conducted statewide seminars/conferences to establish statewide dialogue that leads to effective action steps for future coordination of human service transportation issues.
- Developed a statewide regionalized coordination system.
- Replicated a successful model in one or more communities across the state (*i.e.*, transit pass program; volunteer driver; travel training; etc.).
- Integrated technology to address the needs of coordination on human service transportation, including real time eligibility, accountability, billing, and reporting.
- Developed and tested a mobility management strategy.

G. Program Requirements

Grants made for projects that include operating expenses are subject to Federal requirements that apply to all grants made under the Section 5310 program, including the new requirement that all projects funded under the program were derived from a locally developed, coordinated public transit-human services transportation plan; and the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers with participation by the public. This planning requirement is not in effect for the Section 5310 Elderly Individuals and Individuals with Disabilities Program until FY 2007. SAFETEA–LU includes this provision under Section 3012(b) as well, but does not specify the year in which this requirement goes into effect for the Elderly Individuals and Individuals with Disabilities Pilot Program. Applicants for Section 5310 pilot program funds must therefore meet the requirement in FY 2006. In FY 2006, applicants can meet the requirement by certifying that projects funded that include operating expenses were the result of a consultative process that included public participation. In the coming months, FTA will provide further guidance on the local planning process required under the Section 5310 Elderly Individuals and Individuals with Disabilities Program and the Elderly Individuals and Individuals with Disabilities Pilot Program in FY 2007.

Successful applicants allowed to using a portion of their Section 5310 funds for operating expenses will be expected to collect data necessary to support the report to Congress that FTA must submit within two years of enactment of SAFETEA–LU. FTA will issue more guidance in the coming months on the types of data to be collected, as well as the method to be used for transmitting the data to FTA, to the states participating in the pilot. The

data will be used to evaluate the degree to which funds are used for operating purposes that:

(1) Subsidize existing paratransit service provided to meet the requirements of the Americans with Disabilities Act of 1990 (ADA);

(2) Provide services to persons with disabilities that exceed those required by the ADA;

(3) Provide services to individuals with disabilities that exceed those required by the ADA to the detriment of other eligible projects;

(4) Assist elderly individuals;

(5) Assist persons with disabilities;

(6) Serve a wider range of elderly individuals, individuals with low-incomes, and individuals with disabilities;

(7) Improve services to elderly individuals and individuals with disabilities;

(8) Expand the range of transportation alternatives available to elderly individuals and individuals with disabilities; and

(9) Facilitate or discourage coordination with or integration of other funding sources.

II. Guidelines for Preparing and Submitting Proposals

FTA is conducting a national solicitation for proposals from states wishing to participate in the Elderly Individuals and Individuals with Disabilities Pilot Program. FTA will grant authority for three states, in addition to those named in SAFETEA-LU, to use not more than 33 percent of their annual Section 5310 apportionment for operating expenses related to the program in FY 2006 through FY 2009. States will be selected to participate on a competitive basis. Proposals should be submitted electronically to: *cheryl.oliver@fta.dot.gov* and *marymartha.churchman@fta.dot.gov.* Proposals must be received by FTA no later than December 14, 2005. The state agency designated by the Governor to administer the Section 5310 program will submit a proposal that includes:

1. Applicant Information

Basic identifying information, including:

a. Agency

b. Contact information for notification of project selection: Contact name, address, fax and phone number

2. Project Information

Every application must:

a. Provide the proportion of funds that the state intends to use for operating expenses (not more than 33 percent) for each year of the authorization period (fiscal years 2006–2009);

b. Document sources of funds likely to be used to match FTA funds used for operating purposes;

c. Include a narrative portion (not more than 8 pages, double-spaced) that addresses the state's achievements in advancing coordination of public transit-human services transportation, as described in paragraph F, Proposal Criteria, and how the state expects to further enhance coordinated transportation services as a result of using some of their Section 5310 funds for operating expenses.

III. Proposal Review, Selection, and Notification

FTA will evaluate proposals based on the degree to which a state has advanced coordination of public transit-human services transportation and the degree to which they believe using a portion of their Section 5310 funds for operating expenses will further enhance coordination efforts.

FTA expects to announce states selected to participate in the pilot program in the **Federal Register** Notice of FTA Fiscal Year 2006 Apportionments, Allocations, and Program Information, or in a subsequent notice. The seven states selected will be eligible to participate in the pilot program through FY 2009.

Issued on: November 7, 2005.

Jennifer L. Dorn,

Administrator.

[FR Doc. 05–22524 Filed 11–10–05; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: Surface Transportation Board.

ACTION: 30-day notice that seven existing collections from Class I Railroads are under review by the Office of Management and Budget (OMB), and request for comments: Class I Railroad Annual Report; Quarterly Report of Revenues, Expenses, and Income—Railroads; Quarterly Condensed Balance Sheet—Railroads; Report of Railroad Employees, Service, and Compensation; Monthly Report of Number of Employees of Class I Railroads; Annual Report of Cars Loaded and Cars Terminated; and Quarterly Report of Freight Commodity Statistics.

SUMMARY: The Surface Transportation Board (Board) gives notice that the Board has submitted to OMB a request for review and clearance of the seven existing collections listed above, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). For the most part, these collections continue current Board reporting requirements without revision. As described below, a minor revision has been made to Collection No.1, Class I Railroad Annual Report. OMB control numbers were obtained in the past, but have expired, for six of the seven information collections that are the subject of this request. The Board previously published a notice about these collections in the **Federal Register** on May 19, 2005 at 70 FR 28979. That notice allowed for a 60-day public review and comment period. No comments were received.

The purpose of the current notice is to allow an additional 30 days for public comment to satisfy the requirements of the PRA, 44 U.S.C. 3507(b). Comments are requested concerning each collection as to (1) whether the particular collection of information described below is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be considered by OMB prior to approval of the proposed collection.

DATES: Written comments are due by December 15, 2005.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, and should refer to the title of the specific collection(s) commented upon. These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Surface Transportation Board Desk Officer, Room 10235, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Scott Decker, (202) 565–1531. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

Subjects: In this notice the Board is requesting comments on the following information collections:

Collection Number 1

Title: Class I Railroad Annual Report.
OMB Control Number: 2140–0009.
Form Number: R1.
Type of Review: Reinstatement, with change, of a previously approved collection for which OMB control number has expired.
Respondents: Class I railroads.
Number of Respondents: Fewer than 10.
Revision: Schedule 755 of the Surface Transportation Board's Class I Railroad Annual Report (ACAA–R1) is being modified to include reporting of TOFC/COFC intermodal load factors. The new item is required to support the more accurate calculation of intermodal shipment costs. These cost estimates are used by the Surface Transportation Board when making determinations of market dominance in rail rate proceedings and when evaluating evidence submitted by parties in those proceedings. See 49 U.S.C. 10707. The collection of this information is authorized by section 11145 of the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), and codified at 49 U.S.C. 11145.
Estimated Time Per Response: 800 hours, based on information provided by the railroad industry during the 1990's. This estimate includes time spent reviewing instructions; searching existing data sources; gathering and maintaining the data needed; completing and reviewing the collection of information; and converting the data from the carrier's individual accounting system to the Board's Uniform System of Accounts (USOA), which ensures that the information will be presented in a consistent format across all reporting railroads, see 49 U.S.C. 11141–43, 11161–64, 49 CFR 1200–1201. It is possible that the time required to produce this report is overstated, given the advances made in computerized data collection and processing systems.
Frequency of Response: Annual.
Total Annual Hour Burden: 5,600 hours annually.
Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.
Needs and Uses: Annual reports are required to be filed by Class I railroads under 49 U.S.C. 11145. The reports show operating expenses and operating statistics of the carriers. Operating expenses include costs for right-of-way and structures, equipment, train and yard operations, and general and administrative expenses. Operating statistics include such items as car-miles, revenue ton-miles, and gross ton-miles. The reports are used by the Board, other Federal agencies, and industry groups to monitor and assess railroad industry growth, financial stability, traffic, and operations, and to identify industry changes that may affect national transportation policy. Information from this report is also entered into the Board's Uniform Rail Costing System (URCS), which is a cost measurement methodology. URCS, which was developed by the Board pursuant to 49 U.S.C. 11161, is used as a tool in rail rate proceedings, in accordance with 49 U.S.C. 10707(d), to calculate the variable costs associated with providing a particular service. The Board also uses this information to more effectively carry out other of its regulatory responsibilities, including: Acting on railroad requests for authority to engage in Board-regulated financial transactions such as mergers, acquisitions of control, and consolidations, see 49 U.S.C. 11323–11324; analyzing the information that the Board obtains through the annual railroad industry waybill sample, see 49 CFR 1244; measuring off-branch costs in railroad abandonment proceedings, in accordance with 49 CFR 1152.32(n); developing rail cost adjustment factors, in accordance with 49 U.S.C. 10708; and conducting investigations and rulemakings.

Information from certain schedules contained in these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* Information in these reports is not available from any other source.

Collection Number 2

Title: Quarterly Report of Revenues, Expenses, and Income—Railroads (Form RE&I).
OMB Control Number: 2140–____ (prior number under the Interstate Commerce Commission (ICC): 3120–0027).
Form Number: None.
Type of Review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.
Respondents: Class I railroads.
Number of Respondents: Fewer than 10.
Estimated Time per Response: 6 hours.
Frequency of Response: Quarterly.
Total Annual Hour Burden: 168 hours annually.
Total Annual ''Non Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.
Needs and Uses: This collection is a report of railroad operating revenues, operating expenses and income items; it is a profit and loss statement, disclosing net railway operating income on a quarterly and year-to-date basis for the current and prior years. See 49 CFR 1243.1. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other Federal agencies, and industry groups to monitor and assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Information from these reports is compiled by the Board and published on its Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 3

Title: Quarterly Condensed Balance Sheet—Railroads (Form CBS).
OMB Control Number: 2140–____ (prior number under ICC: 3120–0063).
Form Number: None.
Type of Review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.
Respondents: Class I railroads.
Number of Respondents: Fewer than 10.
Estimated Time per Response: 6 hours.
Frequency of Response: Quarterly.
Total Annual Hour Burden: 168 hours annually.
Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.
Needs and Uses: This collection shows the balance, quarterly and cumulative for the current and prior year, of the carrier's assets and liabilities, gross capital expenditures, and revenue tons carried. See 49 CFR 1243.2. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through specific regulation of railroad rate and service issues and rail

restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other Federal agencies, and industry groups to assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Information from these reports is compiled by the Board and published on its Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 4

OMB Control Number: 2140–____ (prior number under ICC: 3120–0074).

Title: Report of Railroad Employees, Service and Compensation (Wage Forms A and B.)

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 30 hours per quarterly report and 40 hours per annual summation, based on information provided by the railroad industry during the 1990's. It is possible that the time required to collect this information is overstated given the advances made in computerized data collection and processing systems.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: 1120 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows the number of employees, service hours, and compensation, by employee group (e.g., executive, professional, maintenance-of-way and equipment, and transportation), of the reporting railroads. See 49 CFR 1245. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate proposed regulated transactions that may impact rail employees, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics, and Association of American Railroads, use the information contained in the reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 5

Title: Monthly Report of Number of Employees of Class I Railroads (Wage Form C).

OMB Control Number: 2140–____ (prior number under ICC: 3120–0133).

Form Number: STB Form 350.

Type of Review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 1.25 hours.

Frequency of Response: Monthly.

Total Annual Hour Burden: 105 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows, for each reporting carrier, the average number of employees at mid-month in the six job classification groups that encompass all railroad employees. See 49 CFR 1246. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate the impact on rail employees of proposed regulated transactions, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics, and Association of American Railroads, use the information contained in these reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 6

Title: Annual Report of Cars Loaded and Cars Terminated.

OMB Control Number: 2140–____.

Form Number: Form STB–54.

Type of Review: Existing collection in use without an OMB control number.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 4 hours.

Frequency of Response: Annual.

Total Annual Hour Burden: 28 hours annually.

Total Annual ''Non Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection reports the number of cars loaded and cars terminated on the reporting carrier's line. See 49 CFR 1247. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection Number 1. This collection was authorized in *Modification of Class I Reporting Regulations,* STB Ex Parte No. 583 (STB served Jan. 5, 2001); 66 FR 1051–01 (2001). There is no other source for the information contained in this report.

Collection Number 7

OMB Control Number: 2140–0001.

Title: Quarterly Report of Freight Commodity Statistics (Form QCS).

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 217 hours.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: 6,076 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection, which is based on information contained in waybills used by railroads in the ordinary course of business, reports car loadings and total revenues by commodity code for each commodity that moved on the railroad during the reporting period. See 49 CFR 1248. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection Number 1. There is no other source for the information contained in this report.

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB

for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: November 8, 2005.

Vernon A. Williams,

Secretary.

[FR Doc. 05–22540 Filed 11–10–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Ex Parte No. 333]

Sunshine Act Meeting

TIME AND DATE: 2 p.m., November 16, 2005.

PLACE: The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

STATUS: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE CONSIDERED: STB Finance Docket No. 34738, *Paducah & Louisville Railway, Inc.—Acquisition—CSX Transportation, Inc.*

Embraced Case: STB Finance Docket No. 34738 (Sub-No. 1), *Evansville Western Railway, Inc.—Acquisition and Operation Exemption—Paducah & Louisville Railway, Inc.*

Embraced Case: STB Finance Docket No. 34738 (Sub-No. 2), *Four Rivers Transportation, Inc. and Paducah & Louisville Railway, Inc.—Continuance in Control Exemption—Evansville Western Railway, Inc.*

STB Finance Docket No. 28676 (Sub-No. 5), *Grand Trunk Western Railroad—Control—Detroit, Toledo and Ironton Railroad Company and Detroit and Toledo Shore Line Railroad Company (Arbitration Review).*

STB Finance Docket No. 34747, *Central Puget Sound Regional Transit Authority—Acquisition Exemption—BNSF Railway Company.*

STB Finance Docket No. 34734, *Northeast Interchange Railway, LLC—Lease And Operation Exemption—Line in Croton-on-Hudson, NY.*

STB Finance Docket No. 34540, *The Columbus & Ohio River Railroad Company—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.*

STB Ex Parte No. 552 (Sub-No. 9), *Railroad Revenue Adequacy—2004 Determination.*

STB Finance Docket No. 34337, *Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc.* v. *North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad.*

STB Docket No. AB–862X, *Twin State Railroad Company—Abandonment Exemption—in Caledonia and Essex Counties, VT.*

STB Docket No. AB–878, *City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company.*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Congressional and Public Services, Telephone: (202) 565–1596 FIRS: 1–800–877–8339.

Dated: November 9, 2005.

Vernon A. Williams,

Secretary.

[FR Doc. 05–22656 Filed 11–9–05; 3:53 pm]

BILLING CODE 4915–01–P

Corrections

Federal Register

Vol. 70, No. 218

Monday, November 14, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

Correction

In notice document 05–22092 beginning on page 67459 in the issue of Monday, November 7, 2005, make the following corrections:

1. On page 67460, in the first column, in entry #3, in the first line, ''Furany'' should read ''Gurany''.

2. On the same page, in the same column, in the last line, ''CF/IT'' should read ''C4/IT''.

3. On page 67461, in the third column, in entry #17, in the first line, ''Meredth'' should read ''Meredith''.

[FR Doc. C5–22092 Filed 11–10–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Water Act

Correction

In notice document 05–21885 beginning on page 66465 in the issue of Wednesday, November 2, 2005, make the following correction:

On page 66465, in the third column, in the first paragraph, in the ninth line, ''Columbia'' should read ''California.''

[FR Doc. C5–21885 Filed 11–10–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
November 14, 2005

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0138, FRL–7993–7]

RIN 2060–AM77

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On February 3, 2004 (69 FR 5038), the EPA issued national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline) (OLD NESHAP) under section 112 of the Clean Air Act (CAA). In this action, EPA is proposing to amend portions of the OLD NESHAP in response to petitions for judicial review and for administrative reconsideration of the promulgated rule. The proposed amendments are being made to clarify the applicability and control requirements for storage tanks and transfer racks, and amend the recordkeeping and reporting requirements for affected sources for which there are no control requirements. The proposed amendments do not reflect the full set of possible amendments EPA intends to propose in response to all of the issues raised in the petitions for review and reconsideration. The Agency is separately developing a proposed response to some of those issues.

DATES: *Comments.* Submit comments on or before December 29, 2005.

Public Hearing. If a public hearing is requested by November 25, 2005, the EPA will hold a public hearing by November 29, 2005. To request a public hearing, contact Ms. Martha Smith, EPA, Waste and Chemical Processes Group (C439–03), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2421, facsimile number (919) 541–0246, electronic mail address: *smith.martha@epa.gov.*

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2003–0138, 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 systems, 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: (in duplicate, if possible) to Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: (in duplicate, if possible) to: Air and Radiation Docket, Attention Docket ID Number OAR–2003–0138, EPA, 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2003–0138. 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). For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in either the EDOCKET index at *http://www.epa.gov/edocket* or in the legacy docket, A–98–13. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA facility complex in Research Triangle Park, North Carolina, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Smith, EPA, Waste and Chemical Processes Group (C439–03), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2421, facsimile number (919) 541–3207, electronic mail address: *smith.martha@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS * code	SIC * code	Examples of regulated entities
Industry	325211 325192 325188 32411 49311 49319 48611 42269 42271	2821 2865 2869 2911 4226 4612 5169 5171	Operations at major sources that transfer organic liquids into or out of the plant site, including: liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations.
Federal Government			Federal agency facilities that operate any of the types of entities listed under the "industry" category in this table.

* Considered to be the primary industrial codes for the plant sites with OLD operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria 40 CFR part 63, subpart EEEE. If you have any questions regarding the applicability of this action to a particular entity, consult the individual described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting Comments Containing CBI. Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Martha Smith, Waste and Chemical Processes Group, Emission Standards Division, (C439–04), Research Triangle Park, NC 27711, telephone number (919) 541–2421, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Ms. Smith to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed emissions standards.

Outline. The following outline is provided to aid in reading this preamble to the proposed rule amendments.

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I. Background

On February 3, 2004 (69 FR 5063), the **Federal Register** published EPA's National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (40 CFR part 63, subpart EEEE). Subpart EEEE sets emission limits and work practice standards for storage tanks, transfer racks, equipment leak components in organic liquid service, transport vehicles, and containers. These standards identify several control options for storage tanks and transfer racks that meet certain criteria. Because storage tanks and transfer racks in OLD operation may also be covered by other existing NESHAP, subpart EEEE addresses these overlap situations. Finally, subpart EEEE also contains notification, recordkeeping, and reporting requirements.

Since publication of the OLD NESHAP, EPA has received several petitions for administrative reconsideration of the OLD NESHAP, and several petitions for judicial review have been filed in the U.S. Court of Appeals for the DC Circuit. Petitions for reconsideration were submitted to EPA

by the Alliance of Automobile Manufacturers, the General Electric Company, and the Prince William Sound Regional Citizen's Advisory Council (RCAC). Petitions for judicial review were filed by the American Chemical Council, the Coke Oven Environmental Task Force, the General Electric Company, and Mr. Stan Stephens. On April 5, 2004, the court consolidated the petitions for review under *Stan Stephens* v. *USEPA,* No. 04–1112 (DC Cir.). On April 30, 2004, the court granted the motion of Alyeska Pipeline Service Company to intervene in the case and granted the parties' joint motion to hold the case in abeyance pending EPA's response to the petitions for reconsideration.

In responding to the petitions, EPA plans to publish two separate rulemakings. Today's proposed amendments are the first of these two actions. The proposed amendments in this notice are those that the Agency can make without substantial analysis of data and can be made more quickly to ensure correct implementation of the final rule. The remaining items, which are associated with the incorporation of wastewater into the OLD NESHAP, will be addressed in the second rulemaking. Today's proposed amendments, therefore, are not to be considered EPA's response to all of the issues raised in the petitions.

II. Proposed Amendments to the Organic Liquids Distribution NESHAP

We are proposing a number of changes to the OLD NESHAP. For storage tanks, the proposed changes include, but are not limited to, control options for those storing high vapor pressure liquids and overlap with other storage tank rules. For transfer racks, the proposed changes include, but are not limited to, defining total actual annual facility-level organic liquid loading volume and how to calculate its value, revising the definition of transfer rack, and compliance dates and control options as the result of changes in facility-level loading volumes. Numerous changes are being proposed with regard to notification, recordkeeping, and reporting requirements including, but not limited to: (1) Requirements for emission sources that are not required to be controlled under the OLD NESHAP, including startup, shutdown, and malfunction plans; (2) operating scenarios; (3) initial notification of compliance status (NOCS); and (4) Department of Transportation (DOT) certification records for transport vehicles. Other proposed changes include, but are not limited to, adding vapor balancing as a control option for containers, clarifying that cargo tank work practice standards only apply to tanks equipped with vapor collection equipment, allowing an alternative ASTM International method to Method 18 (40 CFR part 60, Appendix A), four new definitions and cross-referencing of definitions to other regulations, and removing the ''1-hour'' requirement for offsite records. In addition, today's proposed amendments would correct typographical errors, including incorrect cross-references.

A. How Are Definitions Being Revised?

1. *Total Actual Annual Facility-Level Organic Liquid Loading Volume.* One of the criteria for determining whether a transfer rack is to be controlled or not is the annual loading volume of organic liquids at the facility. Absent from the OLD NESHAP are a definition of ''total actual annual facility-level organic liquid loading volume'' and guidance on how to calculate this value. Therefore, we are proposing to add a definition to the final rule and include in the definition a detailed explanation of how to calculate this value for existing facilities and for new facilities.

In proposing this definition, we note two important items. First, the loading volume considers both transfers made between facilities (for transport out of the facility) and transfers made within a facility (for transport within the facility). This clarifies the intent to consider both types of transfers and corrects an error in items 7 through 10 in Table 2 to 40 CFR part 63, subpart EEEE, when the phrase ''out of the facility'' is used. Second, we are proposing to calculate this value as an average over 3 years of annual loading volumes rather than a single annual value. Allowing a facility to average its loading volume over 3 years is reasonable because this would smooth out fluctuations in loading volumes from year to year that might arise due to temporary situations, thereby eliminating different control requirement outcomes caused by temporary changes below or above the throughput cut-off level that would occur with an annual time period. The proposed 3-year average should also allow facilities sufficient lead time in tracking their loading volume to assess the need for controlling transfer racks should the loading volume exceed the criterion's trigger value.

We are proposing the methodology to be used to calculate this value as an average using 3 years of actual loading volume data. The value would be recalculated once per year. For example, a facility would collect loading volume data for years 1, 2, and 3. At the end of year 3, the three annual values would be averaged to calculate the total actual annual facility-level organic liquid loading volume. This value would represent the loading volume used in determining whether the transfer racks at the facility would need to be controlled. At the end of year 4, the facility would calculate the annual average using the loading volume data for years 2, 3, and 4. This pattern would repeat itself each year.

For existing affected sources, we are proposing that this calculation be made on a calendar year basis, starting January 1, 2004. If an existing affected source does not have actual loading volume data for the time period from January 1, 2004, through February 2, 2004, (the time period before the effective date of the OLD NESHAP), the owner or operator would calculate loading volume for that period based on the average loading volume from February 3, 2004, through December 31, 2004.

For new affected sources, we are proposing the option of making this calculation beginning on the actual startup date of the facility or on the first day of the calendar month following the month in which actual startup occurs. For example, if actual startup is March 13, 2005, the facility has the option of either using March 13 to March 12 as its annual basis or April 1 to March 31 as its annual basis. We are also proposing that once owners or operators select the beginning date to start their calculations, no changes can be made thereafter.

New affected sources are required to be in compliance at startup. In order for a new affected source to be in compliance, the owner or operator must make a determination as to which transfer racks need to be controlled. However, new affected sources will not have actual loading volume data at their startup to make this determination. Therefore, we are proposing that new facilities make projections as to the facility-level loading volume for the first 3 years of operation. Based on this forecast, the owner or operator would determine the total actual annual facility-level organic liquid loading volume and use the result to determine which transfer racks need to be controlled at startup.

At the end of the first year following the date selected to begin the calculation, the owner or operator would calculate the 3-year average using the first year's actual loading volume plus a new forecast of the loading volume for the next 2 years. At the end of the second year, the owner or

operator would calculate its 3-year average using the first 2 years' actual loading volume data plus a new forecast of loading for the next year. At the end of the third year, and for all subsequent years, following startup, the owner or operator would have actual loading volume data for 3 years and would no longer need to forecast loading volumes. The owner or operator would use the actual loading volume data for the first 3 years to make this calculation, and then use the ''rolling'' 3 years of data for future calculations, as would owners and operators of existing affected sources.

2. *Transfer Rack.* In the OLD NESHAP, the definition of transfer rack includes the concept of loading of organic liquids into transport vehicles. Unfortunately, there were two shortcomings with the definition.

First, the definition is inconsistent with how the term is used when describing the affected sources. As stated in the OLD NESHAP, 40 CFR part 63, subpart EEEE applies to (emphasis added): ''transfer racks at which organic liquids are *loaded into or unloaded out* of transport vehicles and/or containers'' (see 40 CFR 63.2338(b)(2)) and ''all transport vehicles while they are *loading or unloading* organic liquids at transfer racks'' (see 40 CFR 63.2338(b)(4)). However, in the definition section of the OLD NESHAP, transfer rack is defined in part (emphasis added) as ''a single system used to *load* organic liquids into transport vehicles.'' The definition of transfer rack, by limiting itself to only the loading of liquids, creates an inconsistency with the use of the term when defining the affected source. In the affected source, transfer racks can be loading *or unloading* organic liquids (emphasis added).

The intent of the rule is that, for purposes of defining the affected source, both loading and unloading racks are to be included. For purposes of control requirements, however, the OLD NESHAP apply only to racks when they are loading organic liquids into transport vehicles or, for new sources only, containers.

To accomplish this intent, we are proposing to modify the definition of ''transfer rack'' to also refer to unloading. Because of this proposed change to the definition of transfer rack, we are also proposing numerous language changes to ensure that the rule language is specific that control is required for transfer racks when they are loading organic liquids into cargo tanks or when they are filling containers.

For new sources, transfer racks may also load containers, which the definition failed to mention. Therefore, we are proposing to add containers to the definition of transfer rack.

3. *Cross Reference to Other Rules.* The OLD NESHAP use several terms that are defined in other subparts, but not directly in the OLD NESHAP. We are proposing to revise the introductory paragraph at 40 CFR 63.2406 to cross-reference the other 40 CFR part 63 subparts that are referenced in the OLD NESHAP. This is being done by citing the specific definition sections of the applicable subparts in the same manner we cited the definitions found in 40 CFR 63.2 of the General Provisions. This change would not make the OLD NESHAP any more or less stringent, but simply clarifies the intent to use those definitions in the other subparts as appropriate and necessary to implement the OLD NESHAP.

We are proposing to add four new definitions—bottoms receivers, surge control vessels, low-throughput transfer racks, and high-throughput transfer racks—to the OLD NESHAP. These terms are added because their definitions in the cross-referenced rules do not apply to the OLD NESHAP and, therefore, needed to be added.

We are proposing to add a sentence to the introductory paragraph of 40 CFR 63.2406 to clarify a potential conflict in priority between the OLD NESHAP (subpart EEEE) and 40 CFR part 63, subpart PP. The introductory language in the OLD NESHAP and in subpart PP both claim that the terms as defined within each subpart shall have precedent over any other definition for those same terms in another subpart. We are proposing to amend the language in the OLD NESHAP to specifically override the language in subpart PP such that the terms ''container'' and ''safety device'' shall have the meaning given them in the OLD NESHAP notwithstanding the introductory language in 40 CFR 63.921.

We do not believe any other changes to the definition section of the OLD rule are necessary. When complying with the OLD NESHAP, an owner or operator may be required to comply with another subpart (*e.g.*, with 40 CFR part 63, subpart UU, for equipment leak components). If a term needs to be defined in order to comply with subpart UU and that term is not defined in the OLD NESHAP, then the owner or operator would use the definition found in subpart UU. In summary, when complying with the OLD NESHAP, if a term is used and it is not defined in the OLD NESHAP, then that term has the meaning assigned it in the 40 CFR part 63 subpart that is being complied with.

4. *Startup and Shutdown.* In 40 CFR 63.2406, we are proposing to clarify the definitions of ''startup'' and ''shutdown'' by adding the phrase ''(other than as part of normal operation for a batch-type operation), including equipment'' after ''or portion thereof.''

The proposed wording for ''shutdown'' would now read: ''*Shutdown* means the cessation of operation of an OLD affected source, or portion thereof (other than as part of normal operation of a batch-type operation), including equipment required or used to comply with this subpart, or the emptying and degassing of a storage tank. Shutdown as defined here includes, but is not limited to, events that result from periodic maintenance, replacement of equipment, or repair.''

The proposed wording for ''startup'' would now read: ''*Startup* means the setting in operation of an OLD affected source, or portion thereof (other than as part of normal operation of a batch-type operation), for any purpose. Startup also includes the placing in operation of any individual piece of equipment required or used to comply with this subpart including, but not limited to, control devices and monitors.''

The normal operation of transfer racks is such that at times a transfer rack is transferring liquids and at other times it is not transferring liquids. We received questions about whether instances in which transfer racks begin or cease transferring liquids as part of normal ''batch'' type operations would constitute ''startup'' or ''shutdown'' episodes. We never intended such instances to be interpreted in this way. Therefore, to avoid misunderstandings, we are proposing to revise the definitions of startup and shutdown to make it clear that the commencement or cessation of actual transfer of liquids through a transfer rack as part of batch-type operations does not constitute a ''startup'' or a ''shutdown'' of the transfer rack within the meaning of the OLD NESHAP. As a result of this proposed change, emission sources (*i.e.*, transfer racks) that are subject to the OLD NESHAP, but for which control is not required, would not be required to minimize emissions during such periods as would be required under the General Provisions (*i.e.*, 40 CFR 63.11(e)(1)) and would not be required to be addressed in a facility's startup, shutdown, and malfunction plan (*i.e.*, 40 CFR 63.11(e)(3)). Likewise, emission sources subject to the OLD NESHAP for which control is required would remain subject to the control requirements during routine commencement or

cessation of operations that are part of normal batch-type operations.

These proposed changes would also make the OLD NESHAP consistent with other recent EPA standards that recognize cessation of operations that is part of the normal characteristics of batch operations and batch-type operations is not considered ''startup'' or ''shutdown'' for purposes of startup, shutdown, and malfunction plans. Rather than revising the definitions of ''startup'' and ''shutdown'' to achieve this purpose, an alternative may be to simply amend Table 12 to 40 CFR part 63, subpart EEEE, to clarify that the duty to minimize emissions during periods of startup, shutdown and malfunction, in 40 CFR 63.11(e)(1) of the General Provisions, does not apply to emissions sources that are part of the OLD affected source but are not subject to emissions control requirements. EPA requests comment on this alternative approach.

5. *Vapor Balancing System.* We are proposing revisions to this definition to include reference to containers. We are proposing to extend the option of vapor balancing systems to containers. We are also proposing to clarify that vapors need to be ''directly conveyed'' to a ''chemical manufacturing process unit,'' and are, thus, proposing to replace ''compresses the vapors for feeding into a chemical process manufacturing unit'' with ''compresses the vapor for direct conveyance to a chemical manufacturing unit.''

6. *Vapor Collection System.* We are proposing to add reference to the conveyance of vapors displaced during the loading of containers to this definition. The OLD NESHAP inadvertently do not contain this reference, even though the use of control devices to control emissions from the filling of containers is a control option.

B. How Are Control Options Being Revised?

1. *Storage Tanks with High Vapor Pressure Liquids.* Between proposal and promulgation, we added the equivalent control option of routing emissions to a fuel gas system or back to a process, per 40 CFR part 63, subpart SS, for storage tanks storing liquids with vapor pressures less than 11.1 psia. The OLD NESHAP did not extend this option to storage tanks storing liquids with vapor pressures greater than 11.1 psia. This was not an intentional exclusion. Most, but not all, tanks storing liquids with high vapor pressure are pressurized. Pressurized tanks do not have emissions. However, non-pressurized tanks storing liquids with high vapor pressures have the same types of emissions (working and/or breathing losses) as those tanks storing liquids with lower vapor pressures. In these instances, the controls that are applicable to the tanks storing the liquids with vapor pressures less than 11.1 psia are applicable to tanks storing liquids with vapor pressures greater than 11.1 psia. Therefore, we are proposing revisions, which appear in Tables 2 and Table 4 to 40 CFR part 63, subpart EEEE, to allow these storage tanks the same equivalent option as those storing lower vapor pressure liquids.

2. *Overlap of Storage Tank Rules.* The Agency is proposing to revise the manner in which the OLD NESHAP address the overlap of the OLD NESHAP with 40 CFR part 60, subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984) and with 40 CFR part 61, subpart Y (National Emission Standard for Benzene Emissions from Benzene Storage Vessels). In the OLD NESHAP, 40 CFR 63.2396(a), storage tanks that are subject to the OLD NESHAP requirements (which reference 40 CFR part 63, subpart WW) and either of these other two rules are required to comply with the requirements of the OLD NESHAP when the tank is in OLD operation.

Another recent rule (*i.e.,* the Miscellaneous Organic NESHAP, or MON) promulgated by the Agency handles this overlap in a different fashion. In the MON, we allow facilities with storage tanks subject to both the MON and either of the other two rules noted above to be considered in compliance with the MON when they are in compliance with either of the other two rules.

In assessing whether this approach was appropriate for the OLD NESHAP, we reviewed the OLD data used to establish the MACT floor and compared the requirements of the OLD NESHAP with 40 CFR part 60, subpart Kb, and 40 CFR part 61, subpart Y. Based on that review, 40 CFR part 60, subpart Kb, is equal to or more stringent than the MACT floor established for storage tanks. Therefore, allowing a facility to comply with 40 CFR part 60, subpart Kb, or, for that matter, with 40 CFR part 61, subpart Y, would not be less stringent than the MACT floor for the OLD NESHAP and provides the same level of control as that found in 40 CFR part 63, subpart WW. We, therefore, are proposing to revise the wording in 40 CFR 63.2396(a) to allow facilities to comply with 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, for these storage tanks. However, we are not proposing to revise the 5-year recordkeeping requirement for OLD storage tanks. This is a longer timeframe than found in 40 CFR part 60, subpart Kb, or in 40 CFR part 61, subpart Y, which have a 2-year timeframe for keeping records. Finally, we are not proposing to revise the OLD monitoring, recordkeeping, and reporting requirements for OLD storage tanks that are controlled using closed vent systems (which is consistent with the MON). In sum, we have determined that the MACT floor is being maintained, and there is no loss in stringency as the result of the proposed changes.

3. *Transfer Racks.* While we believe our intent is clear in 40 CFR 63.2346(b) as to which transfer racks are to be controlled, the language is not accurate. The organic hazardous air pollutant (HAP) criterion is applied to the individual rack, but the ''facility-level organic liquid loading volume'' criterion is not. The loading volume criterion is based on the volume for all transfer racks and not for the individual transfer rack. Therefore, we are proposing to revise the introductory text as follows:

> ''For each transfer rack that is part of the collection of transfer racks that meets the total actual annual facility-level organic liquid loading volume criterion for control in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (b)(1), (2), or (3) of this section for each arm in the transfer rack loading an organic liquid whose organic HAP content meets the organic HAP criterion for control in Table 2 to this subpart, items 7 through 10.''

4. *Changes in OLD Loading Volume.* Over time, the OLD loading volume at a facility may increase or decrease. These changes may be large enough that the 3-year rolling average creates a situation where a facility that is controlling its transfer racks no longer meets the criteria for control, or where a facility that is not controlling its transfer racks now meets the criteria for control. The OLD NESHAP does not explicitly indicate the control requirements when a facility encounters such situations. We are, therefore, proposing language to specifically indicate the control requirements and timing when such changes occur.

We are proposing that if a facility is controlling its transfer racks, but the loading volume decreases at a later date to such a level that the criteria for control are no longer being met, compliance with the control requirements specified in 40 CFR 63.2386(b)(1), (2), or (3) is no longer required until such time that the total

actual facility-wide organic loading volume increases to a level requiring control.

We are also proposing that if a facility is not controlling its transfer racks, but the loading volume increases at a later date to such a level that the criteria for control is now met, compliance with the control requirements specified in 40 CFR 63.2386(b)(1), (2), or (3) is required immediately, except as may be provided for existing sources only.

5. *Transfer Racks and Table 2 Emission Limits.* The OLD NESHAP require a transfer rack to comply with each of the three emission limitations identified in item 7 in Table 2 to 40 CFR part 63, subpart EEEE. These emission limitations are: (1) Reduce emissions by 98 percent reduction or to 20 ppmv; (2) vent emissions through a closed vent system to any combination of control devices in compliance with 40 CFR part 63, subpart SS; and (3) meet one of two work practice standards specified in Table 4 to subpart EEEE. Requiring a facility to comply with all three emission limitations was not our intent and further is not technically feasible. To correct this, we are proposing to combine the first two emission limitations into a single emission limitation (which we incorrectly split into two limitations between proposal and promulgation and which would now parallel the correct construct of item 6 in Table 2 to subpart EEEE) and clarify that a facility is to comply with either 98 percent reduction or 20 ppmv emission limitation or one of the two work practice standards.

6. *Transfer Racks and Routing Emissions to a Process.* The OLD NESHAP allow a facility the option to comply with 40 CFR part 63, subpart SS, which allows a facility to route emissions to fuel gas systems or back to *a* process (emphasis added). The OLD NESHAP inadvertently use the phrase ''the process,'' which has the potential effect of unnecessarily limiting a facility's option for routing vent gases. Therefore, we are proposing to use the phrase ''a process'' in conjunction with this compliance option.

7. *Vapor balancing and containers.* The OLD NESHAP do not allow vapor balancing as a control option for the filling of containers. However, vapor balancing can be an effective control option for the filling of containers. Therefore, we are proposing vapor balancing, under certain conditions, as a control option for the filling of containers, identifying applicability for existing sources and new sources and revising the definitions of ''vapor balancing systems'' and ''vapor collection system.''

8. *Vapor balancing and routing of displaced vapors.* The control option of vapor balancing for transfer racks is stated inconsistently in the OLD NESHAP in 40 CFR 63.2346(b)(3) and in Table 7 to 40 CFR part 63, subpart EEEE. We are proposing to resolve this inconsistency by revising 40 CFR 63.2346(b)(3) to include routing of vapors to a process unit.

The OLD NESHAP direct that the routing of the displaced vapors is to be made to the ''appropriate storage tank.'' We are proposing to revise this phrase to now read ''to the storage tank from which the liquid being loaded originated.'' We believe this change makes the rule clearer.

9. *Cargo Tank Work Practice Standards.* The cargo tank work practices in the OLD NESHAP (see 40 CFR 63.2346(d) and items 4 and 5 in Table 4 to 40 CFR part 63, subpart EEEE) create a technological inconsistency—requiring vapor tightness on transport vehicles being loaded at transfer racks that were not being controlled. We are proposing to correct this error by requiring vapor tightness only on transport vehicles being loaded at transfer racks that are being controlled. The proposed amendment would affect both cargo tanks with and cargo tanks without vapor collection equipment.

C. How Are My Notification, Recordkeeping, and Reporting Requirements Being Revised?

1. *Emission sources not subject to control.* We are proposing to overhaul the OLD NESHAP notification, recordkeeping, and reporting requirements for emission sources not subject to control. The proposed amendments are found mostly in a proposed new section, 40 CFR 63.2343, with some additional changes needed in other parts of the rule. The OLD NESHAP currently identifies requirements for these sources in 40 CFR 63.2346(h) and 63.2386(c)(9). Under today's proposed amendments, 40 CFR 63.2346(h) would be deleted and ''reserved,'' because it is no longer needed. With regard to 40 CFR 63.2386(c)(9), the proposed amendments would revise (as described below) and redesignate the paragraph (as proposed 40 CFR 63.2386(c)(10)(i)).

In today's proposed rulemaking, we are proposing to exempt all emission sources in the affected source not requiring control under the OLD NESHAP from notification, recordkeeping, and reporting requirements, except as otherwise specified in the proposed new 40 CFR 63.2343. The proposed exceptions would apply to storage tanks and transfer racks.

Storage tanks and transfer rack that would never be required to be controlled. For storage tanks and transfer racks that would never be required to be controlled under the OLD NESHAP as they currently apply, we are proposing that owners and operators submit an Initial Notification identifying such emission sources; and keep documentation verifying the ''no control'' status be kept up-to-date by the owner or operator. By the phrase ''up-to-date,'' we mean that such emission sources at a facility are identified in the documentation regardless of when the documentation was last compiled. Further, this documentation needs to be up-to-date only as it pertains to emission sources that are still physically present at a facility.

The proposed amendments would also have the effect of eliminating the requirement for listing these sources in the NOCS, first compliance report, and subsequent compliance reports. Once the Initial Notification has been submitted, we believe it is unnecessary to continue to identify such emission sources in NOCS, first compliance report, and subsequent compliance reports as long as owners and operators keep documentation that such emission sources would never require control under the OLD NESHAP.

Storage tanks and transfer racks that could be required to be controlled, but for which control is not currently required. For storage tanks and transfer racks that could be required to be controlled, but for which control is not currently required, we are proposing changes to notification and reporting and to documentation.

We believe that it is important for an owner or operator to identify those storage tanks and transfer racks for which control could be required if and when the HAP content or throughput changes, even if control is not required at the time either the NOCS of the first compliance report is filed. Therefore, we are proposing owners and operators submit a list of all transfer racks (except those at which only unloading of organic liquids occurs) and of tanks greater than or equal to 18.9 cubic meters (5,000 gallons) that are part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of 40 CFR part 63, subpart EEEE (see proposed 40 CFR 63.2386(c)(10)(i)).

Owners and operators would be required to submit this list with either the NOCS or the first Compliance report, whichever is submitted first.

After the NOCS or a Compliance report has been submitted, changes to a storage tank or transfer rack may have been made that affect its compliance status (e.g., an uncontrolled storage tank becomes subject to control). The types of changes that we are proposing to be reported are:

• Any storage tank or transfer rack that became subject to control since the filing of the last Compliance report (see proposed 40 CFR 63.2386(d)(3)). The intent here is to cover any storage tank or transfer rack that existed at the facility when the last Compliance report was filed, but has undergone a change that now subjects the storage tank or transfer rack to control; and any storage tank or transfer rack that was constructed at the facility since the last Compliance report was filed, that is being used (e.g., contains liquid), that is in OLD service and that meets the OLD criteria for control.

• Any storage tank greater than or equal to 18.9 cubic meters (5,000 gallons) and any transfer rack that is part of the affected source, but which are not subject to any of the emission limitations, operating limits, or work practice standards of the OLD NESHAP, that became part of the affected source since the filing of the NOCS or the last Compliance report (see proposed 40 CFR 63.2386(d)(4)). The intent here is to cover any storage tank or transfer rack that was constructed at the facility since the NOCS or the last Compliance report was filed, that is part of the affected source (i.e., is in OLD service), but does not meet any of the criteria for control under the OLD rule; and any storage tank or transfer rack that existed at the facility prior to the filing of the NOCS or last Compliance report that was not in OLD service that is now in OLD service (i.e., is now part of the affected source), but does not meet any of the criteria for control under the OLD NESHAP.

We are proposing that such changes be reported in either the NOCS or the first Compliance report (depending on which was submitted first (see proposed 40 CFR 63.2382(d)(2)(viii) and 63.2386(c)(10(ii)) and in subsequent Compliance reports whenever such changes occur after the filing of the last Compliance report (see proposed 40 CFR 63.2386(d)(3) and (4)).

Proposed 40 CFR 63.2343 specifies the documentation that would be required for these emission sources. We are also proposing to modify 40 CFR 63.2390, What records must I keep?, to clarify the applicability of proposed 40 CFR 63.2343 and 40 CFR 63.2390 to all emission sources subject to the OLD NESHAP.

For storage tanks that could be subject to control, but are not required to be controlled, we are proposing that documentation be kept that demonstrates the status of the tank, including a record of the annual average true vapor pressure of the organic liquid being stored in each such tank.

For transfer racks that could be subject to control, but are not required to be controlled, we are proposing that documentation be kept that demonstrates the status of the transfer rack.

General Provisions. For all emission sources for which control is not required, we are proposing to amend the applicability of the General Provisions in two ways. First, we are proposing to modify the applicability of 40 CFR 63.6(e)(3) by not requiring startup, shutdown, and malfunction (SSM) plans for these emission sources because SSM plans apply to control devices used to comply with regulations, and these emission sources are not required to be controlled.

Second, in the proposed new 40 CFR 63.2343 for emission sources not required to be controlled, we specifically identify those changes that require a facility to submit information and are proposing to modify the applicability of 40 CFR 63.9(j) such that it would not apply to these emission sources.

2. *Transport Vehicles and DOT Certifications*. In the OLD NESHAP, we require owners or operators to keep documentation on the DOT certifications for transport vehicles loaded at their facilities. Other NESHAP allow an alternative to this requirement, which we believe can also be applied to transport vehicles loading organic liquids. This proposed alternative would allow owners and operators to simply record in a number of acceptable methods the verification of DOT certification without actually keeping such documentation (see proposed 40 CFR 63.2390(c)(3)).

3. *Initial Notification of Compliance Status*. The OLD NESHAP allow facilities with multiple control devices to submit a single NOCS and up to 240 days after the compliance date to submit it. To make this provision explicitly clear, we are proposing to revise the applicability of the General Provisions at 40 CFR 63.7(g) and 63.9(h)(1)–(6) in Table 12 to 40 CFR part 63, subpart EEEE, to allow facilities to submit a single initial NOCS with test reports either within 240 days after the compliance date or within 60 days after the completion of the last compliance test demonstrating compliance, whichever occurs first.

4. *Offsite Records*. The OLD NESHAP (see 40 CFR 63.2394(a)) allow facilities to store on-site records ''in electric form at a separate location from the site provided they can be access and printed at the site within 1 hour after a request by the applicable title V permitting authority.'' EPA included the ''1-hour'' requirement at promulgation, but now believes that it is unnecessarily restrictive. Therefore, we are proposing to revise 40 CFR 63.2394(a) by removing the ''1-hour'' requirement and stating explicitly that records kept off-site are to be available for ''expeditious review and inspection.'' We are also proposing to eliminate the provision allowing on-site records to be stored off-site in electronic format because ''expeditious retrieval'' of records stored off-site does not meet the General Provision's requirements that records be stored ''on-site'' for the first 2 years.

5. *Operating Scenarios*. The OLD NESHAP require facilities to identify operating scenarios in the NOCS report and then to update changes to operating scenarios in the semiannual compliance reports. We are proposing to delete ''operating scenarios'' from the OLD NESHAP because the term is not applicable to the OLD source category.

D. How Are Compliance Requirements Being Changed?

1. *Changes in OLD Loading Volume—Compliance Dates*. We are proposing language to clarify when transfer racks must be in compliance when the total actual annual facility-level organic liquid loading volume decreases such that control is no longer required, or when it increases such that control is required (see 40 CFR 63.2342(a)(3) and (b)(3)). For both new and existing sources, we are proposing that a source whose loading volume increases to a level such that control of transfer racks is required, be in compliance with the transfer rack requirements immediately. We are proposing to define ''immediately'' as the first day of the period following the end of the 3-year period triggering the control criteria.

For existing sources, however, we are proposing that owners or operators of existing sources be allowed to request a compliance extension of up to 1 year if the additional time is necessary for the installation of controls. This proposed request for a compliance extension is similar to that provided for under 40 CFR 63.100(l)(4)(ii)(B) of the Hazardous Organic NESHAP. We are also proposing to limit the use of this compliance extension provision to once for each facility (see 40 CFR 63.2342(b)(3)(ii)(I)). That is, once an owner or operator has requested an

extension of compliance for its facility, the owner or operator cannot request such an extension at a later date if changes in loading volume again create a situation in which control of transfer racks is once again required.

2. *ASTM D7420–99*. In the preamble to the OLD NESHAP, we indicated that we had included ASTM D7420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), as an alternative to Method 18. However, we neglected to add the method to the final rule. Therefore, we are proposing language, in 40 CFR 63.2354(b)(3), adding ASTM D7420–99 as an alternative to Method 18 to determine compliance with the organic HAP or TOC emission limit.

3. *Reformulation*. One of the petitioners requested clarification as to the periodic reporting requirements for a facility that reformulates materials prior to the compliance date, and for a facility that reformulates materials after the compliance date. The reformulation the petitioner is concerned about is where a material that meets the definition of an organic liquid as defined in 40 CFR 63.2402 is reformulated in such a manner that the material no longer meets the definition of an organic liquid.

The OLD NESHAP apply to emission sources when they are in OLD service. If a facility reformulates a material in such a manner that the material no longer is an organic liquid, as defined in 40 CFR 63.2406, the emission source is not in OLD service and, therefore, is neither subject to the OLD NESHAP nor its reporting requirements. If all of the material at a facility were reformulated such that there is no organic liquid at the facility, the entire facility would have no emission sources in organic liquid service and would not be required to meet the periodic compliance reporting requirements. If the facility were to later reformulate the material such that it once again met the definition of organic liquid, then the emission source would be in OLD service and subject to all applicable requirements of the OLD NESHAP, including periodic reporting requirements.

The Agency does not believe that it is necessary to modify the OLD NESHAP to address the specific situations posed by the petitioner. In addition, we do not believe this issue needs to be treated differently if the reformulation occurs prior to or after the compliance date of the final rule.

E. How Is the Affected Source Being Changed?

1. *Containers*. In 40 CFR 63.2338(b)(2) of the OLD NESHAP, we identify ''transfer racks'' as a component of the affected source and identify in that paragraph both ''transport vehicles'' and ''containers'' into which or out of which the liquids are loaded. We then identify, in 40 CFR 63.2338(b)(4), ''transport vehicles'' as a separate component of the affected source. However, we neglected to also identify ''containers'' as a separate component of the affected source. To correct this oversight, we are proposing to add a new paragraph (b)(5) to 40 CFR 63.2338 to identify containers as a separate component of the affected source.

2. *Transport Vehicles*. In 40 CFR 63.2338(b)(4) of the OLD NESHAP, it is unclear as to whether the affected source includes transport vehicles while they are loading or unloading organic liquids at any transfer rack or only at transfer racks subject to the OLD NESHAP. We are proposing to revise 40 CFR 63.2338(b)(4) to state that only those transport vehicles loading or unloading at transfer racks subject to the OLD NESHAP are to be included in the affected source.

3. *Excluded Equipment*. As stated in 40 CFR 63.2338(b), the affected source is composed of storage tanks, transfer racks, equipment leak components, transport vehicles, and containers. The OLD NESHAP, in 40 CFR 63.2338(c), exclude from the affected source three of these five types of equipment—storage tanks, transfer racks, and equipment leak components—under certain conditions (e.g., subject to another 40 CFR part 63 NESHAP, used in special operations, used to conduct maintenance activities). We know of no reason that transport vehicles and containers when used in the same circumstances as the three cited types of equipment should not also be included in these exclusions. Therefore, we are proposing to revise 40 CFR 63.2338(c) accordingly.

4. *Equipment Leak Components*. The OLD NESHAP (see 40 CFR 63.2338(c)(2)) is unclear as to which equipment leak components are to be excluded from the affected source definition. For example, are equipment leak components associated with a pipeline originating offsite that goes directly to a tank subject to the Hazardous Organic NESHAP (HON) part of the affected source? Or, as another example, are equipment leak components associated with a pipeline from a transfer rack subject to the OLD NESHAP that goes to a tank subject to the HON part of the affected source?

To clarify the determination of which equipment leak components are included in the definition of the affected source and which are excluded, we are proposing to revise 40 CFR 63.2338(b)(3) to clearly state that equipment leak components are part of the affected source if they are associated with pipelines that transfer organic liquids directly to and from storage tanks and/or transfer racks, both of which are subject to the OLD NESHAP. Equipment leak components associated with pipelines that connect two storage tanks, two transfer racks, or a storage tank and a transfer rack are subject to the OLD NESHAP only if both storage tanks, both transfer racks, or both the storage tank and transfer rack are subject to the OLD NESHAP. These three scenarios comprise the situations in which equipment leak components associated with pipelines are part of the OLD affected sources.

Lastly, because the proposed revisions to 40 CFR 63.2338(b)(3) include all those equipment leak components that we intend to include, we do not believe there is any need to have an equipment leak component exclusion. Therefore, we are proposing to delete 40 CFR 63.2338(c)(2) from the OLD NESHAP.

5. *Coke by-product Plants*. One of the petitioners requested clarification as to the applicability of the OLD NESHAP to coke by-product plants. On January 30, 2001 (66 FR 8220), EPA deleted coke by-product plants from the list of major and area sources of HAP required by CAA section 112(c)(1). Consequently, 40 CFR part 63 MACT standards promulgated under CAA section 112(d), such as the OLD NESHAP, would not apply to the deleted coke by-product plant source category. Moreover, as EPA explained in 2001, coke by-product plants remain subject to the pre-existing NESHAP for benzene emissions from coke by-product recovery plants at 40 CFR part 61, subpart L. See 66 FR at 8222. EPA is not proposing any changes to the OLD NESHAP in order to clarify this issue, as it is unnecessary to do so. The result follows from EPA's previous action in 2001 deleting the coke by-product plant source category.

F. Miscellaneous Edits

There are numerous edits being proposed to address typographical errors and oversights in the OLD NESHAP. These edits make clearer our intent, correct punctuation, or change cross-references because of the other changes being proposed in today's rulemaking; they do not affect the stringency of the final rule or its

enforceability. These edits may be found in the EDOCKET (see **ADDRESSES** section).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in standards that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''non-significant regulatory action'' within the meaning of the Executive Order and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final rule required owners and operators to list sources not subject to control in the first and subsequent compliance reports and to keep appropriate documentation. The final rule applied these requirements across-the-board for all emission sources not requiring control and, in general, was not specific as to what recordkeeping is required. Under the proposed amendments, we are clarifying how these provisions would apply to those emission sources for which control would never be required and to those emission sources for which control could be required, but is not currently required. In addition, we are identifying the specific circumstances under which listing in subsequent Compliance reports would be required for sources for which control is not required rather than requiring all previously identified sources to be re-listed. Further, we are narrowing the applicability of certain sections of the General Provisions for sources for which control is not required because the proposed amendments make such application of those sections in the General Provisions unnecessary. Thus, in sum, the proposed amendments are not adding new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 63, subpart EEEE under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060 0539, EPA ICR number 1963. A copy of the OMB approved Information Collection Request (ICR) 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 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 proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.20; (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 amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Today's proposed amendments will not impose any new requirements on small entities, and will reduce some of the burden established under the promulgated rule. We have therefore concluded that today's proposed amendments will relieve regulatory burden by, for example, exempting all emission sources in the affected source not requiring control under the OLD NESHAP from notification, recordkeeping, and reporting requirements, except as otherwise specified for all affected small entities; excluding from the affected source three types of equipment—storage tanks, transfer racks, and equipment leak components—under certain conditions that are used in special operations and to conduct maintenance activities; and proposing that owners or operators of existing sources be allowed to request a compliance extension of up to 1 year if the additional time is necessary for the installation of controls. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 that alternative was not adopted. Before the 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 potential affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor do the proposed amendments significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the proposed amendments.

E. Executive Order 13132: Federalism

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

Today's proposed amendments do not have federalism implications. The proposed amendments correct typographical errors, clarify provisions, or eliminate unnecessary recordkeeping and reporting requirements for emission sources for which there are no control requirements. These changes do not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. The proposed amendments will not have new substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the proposed amendments.

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

Executive Order 13175 (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.'' The proposed amendments do not have tribal implications as specified in Executive Order 13175. They 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. Thus, Executive Order 13175 does not apply to these proposed amendments.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's proposed amendments are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

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

The proposed 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. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. In the preamble to the OLD NESHAP, we indicated that we had revised the rule to include three voluntary consensus methods, including ASTM D7420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), as an alternative to Method 18. While we did

include two of the three voluntary consensus methods, we neglected to add ASTM D7420–99 to the final rule. Therefore, we are proposing language adding ASTM D7420–99 as an alternative to Method 18 to determine compliance with the organic HAP or TOC emission limit under certain circumstances.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 31, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Section 63.14 is amended by revising paragraph (b)(29) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(29) ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for §§ 63.2354, 63.5799, and 63.5850.

* * * * *

Subpart EEEE—[Amended]

3. Section 63.2338 is amended by:

a. Revising paragraphs (b)(3) and (b)(4);

b. By adding a new paragraph (b)(5);

c. Revising paragraph (c)(1);

d. Removing paragraph (c)(2) and redesignating paragraphs (c)(3) and (c)(4) as (c)(2) and (c)(3), respectively; and

e. Revising newly designated paragraphs (c)(2) and (c)(3) to read as follows:

§ 63.2338 What parts of my plant does this subpart cover?

* * * * *

(b) * * *

(3) All equipment leak components in organic liquids service that are associated with:

(i) Storage tanks storing organic liquids;

(ii) Transfer racks loading or unloading organic liquids;

(iii) Pipelines that transfer organic liquids directly between two storage tanks that are subject to this subpart;

(iv) Pipelines that transfer organic liquids directly between a storage tank subject to this subpart and a transfer rack subject to this subpart; and

(v) Pipelines that transfer organic liquids directly between two transfer racks that are subject to this subpart.

(4) All transport vehicles while they are loading or unloading organic liquids at transfer racks subject to this subpart.

(5) All containers while they are loading or unloading organic liquids at transfer racks subject to this subpart.

(c) * * *

(1) Storage tanks, transfer racks, transport vehicles, containers, and equipment leak components that are part of an affected source under another 40 CFR part 63 national emission standards for hazardous air pollutants (NESHAP).

(2) Non-permanent storage tanks, transfer racks, transport vehicles, containers, and equipment leak components when used in special situation distribution loading and unloading operations (such as maintenance or upset liquids management).

(3) Storage tanks, transfer racks, transport vehicles, containers, and equipment leak components when used to conduct maintenance activities, such as stormwater management, liquid removal from tanks for inspections and maintenance, or changeovers to a different liquid stored in a storage tank.

* * * * *

4. Section 63.2342 is amended by:

a. Revising paragraph (a) introductory text;

b. Adding paragraph (a)(3);

c. Revising paragraph (b)(1);

d. Adding paragraph (b)(3); and

e. Revising paragraph (d) to read as follows:

§ 63.2342 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the schedule identified in paragraph (a)(1), (2), or (3) of this section, as applicable.

* * * * *

(3) If, after startup of a new affected source, the total actual annual facility-level organic liquid loading volume at that source exceeds the criteria for control in Table 2 to this subpart, items 9 and 10, the owner or operator must comply with the transfer rack requirements specified in § 63.2346(b) immediately; that is, be in compliance the first day of the period following the end of the 3-year period triggering the control criteria.

(b)(1) If you have an existing affected source, you must comply with the emission limitations, operating limits, and work practice standards for existing affected sources no later than February 5, 2007, except as provided in paragraphs (b)(2) and (3) of this section.

* * * * *

(3)(i) If an addition or change other than reconstruction as defined in § 63.2 is made to an existing affected facility that causes the total actual annual facility-level organic liquid loading volume to exceed the criteria for control in Table 2 to this subpart, items 7 and 8, the owner or operator must comply with the transfer rack requirements specified in § 63.2346(b) immediately; that is, be in compliance the first day of the period following the end of the 3-year period triggering the control criteria.

(ii) If the owner or operator believes that compliance with the transfer rack emission limits cannot be achieved immediately, as specified in paragraph (b)(3)(i) of this section, the owner or operator may submit a request for a compliance extension, as specified in paragraphs (b)(3)(ii)(A) through (I) of this section. Subject to paragraph (b)(3)(ii)(B) of this section, until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph (b)(3)(ii), the owner or operator of the transfer rack subject to the requirements of this section shall comply with all applicable requirements of this subpart. Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(A) *Submittal.* The owner or operator shall submit a request for a compliance extension to the Administrator (or a State, when the State has an approved 40 CFR part 70 permit program and the source is required to obtain a 40 CFR part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) seeking an extension allowing the source up to 1 additional year to comply with the transfer rack standard, if such additional period is necessary for the installation of controls. The owner or operator of the affected source who has requested an extension of compliance under this paragraph (b)(3)(ii)(A) and who is otherwise required to obtain a title V permit shall apply for such permit, or apply to have the source's

title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph (b)(3)(ii)(A) will be incorporated into the affected source's title V permit according to the provisions of 40 CFR part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) *When to submit.* (*1*) Any request submitted under paragraph (b)(3)(ii)(A) of this section must be submitted in writing to the appropriate authority no later than 120 days prior to the affected source's compliance date (as specified in paragraph (b)(3)(i) of this section), except as provided for in paragraph (b)(3)(ii)(B)(2) of this section. Nonfrivolous requests submitted under this paragraph (b)(3)(ii)(B)(*1*) will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the date of denial.

(*2*) An owner or operator may submit a compliance extension request after the date specified in paragraph (b)(3)(ii)(B)(1) of this section provided the need for the compliance extension arose after that date, and before the otherwise applicable compliance date and the need arose due to circumstances beyond reasonable control of the owner or operator. This request must include, in addition to the information required in paragraph (b)(3)(ii)(C) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problems. Nonfrivolous requests submitted under this paragraph (b)(3)(ii)(B)(*2*) will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the original compliance date.

(C) *Information required.* The request for a compliance extension under paragraph (b)(3)(ii)(A) of this section shall include the following information:

(*1*) The name and address of the owner or operator and the address of the existing source if it differs from the address of the owner or operator;

(*2*) The name, address, and telephone number of a contact person for further information;

(*3*) An identification of the organic liquid distribution operation and of the specific equipment for which additional compliance time is required;

(*4*) A description of the controls to be installed to comply with the standard;

(*5*) Justification for the length of time being requested; and

(*6*) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(*i*) The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated;

(*ii*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(*iii*) The date by which final compliance is to be achieved.

(D) *Approval of request for extension of compliance.* Based on the information provided in any request made under paragraph (b)(3)(ii)(C) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with the transfer rack emission standard, as specified in paragraph (b)(3)(ii) of this section. The extension will be in writing and will—

(*1*) Identify each affected source covered by the extension;

(*2*) Specify the termination date of the extension;

(*3*) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(*4*) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests);

(*5*) Specify the contents of the progress reports to be submitted and the dates by which such reports are to be submitted, if required pursuant to paragraph (b)(3)(ii)(E) of this section.

(*6*) Under paragraph (b)(3)(ii) of this section, specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period.

(E) *Progress reports.* The owner or operator of an existing source that has been granted an extension of compliance under paragraph (b)(3)(ii)(D) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached.

(F) *Notification of approval or intention to deny.* (*1*) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (b)(3)(ii) of this section. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application; that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. Failure by the Administrator to act within 30 calendar days to approve or disapprove a request submitted under paragraph (b)(3)(ii) of this section does not constitute automatic approval of the request.

(*2*) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(*3*) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with:

(*i*) Notice of the information and findings on which the intended denial is based; and

(*ii*) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(*4*) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(G) *Termination of extension of compliance.* The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraph (b)(3)(ii)(D)(*3*) or (*4*) of this section is not met. Upon a determination to terminate, the

Administrator will notify, in writing, the owner or operator of the Administrator's determination to terminate, together with:

(*1*) Notice of the reason for termination; and

(*2*) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the determination to terminate, additional information or arguments to the Administrator before further action on the termination.

(*3*) A final determination to terminate an extension of compliance will be in writing and will set forth the specific grounds on which the termination is based. The final determination will be made within 30 calendar days after presentation of additional information or arguments, or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(H) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Clean Air Act.

(I) *Limitation on use of compliance extension.* The owner or operator may request an extension of compliance under the provisions specified in paragraph (b)(3)(ii) of this section only once for each facility.

* * * * *

(d) You must meet the notification requirements in §§ 63.2343 and 63.2382(a), as applicable, according to the schedules in § 63.2382(a) and (b)(1) through (3) and in subpart A of this part. Some of these notifications must be submitted before the compliance dates for the emission limitations, operating limits, and work practice standards in this subpart.

5. Section 63.2343 is added to subpart EEEE to read as follows:

§ 63.2343 What are my requirements for emission sources not requiring control?

This section establishes the notification, recordkeeping, and reporting requirements for emission sources identified in § 63.2338 that do not require control under this subpart (i.e., under paragraphs (a) through (e) of § 63.2346). Such emission sources are not subject to any other notification, recordkeeping, or reporting sections in this subpart, including § 63.2350(c), except as indicated in paragraphs (a) through (d) of this section.

(a) For each storage tank subject to this subpart having a capacity of less than 18.9 cubic meters (5,000 gallons) and for each transfer rack subject to this subpart that only unloads organic liquids (i.e., no organic liquids are loaded at any of the transfer racks), you must keep documentation that verifies that each storage tank and transfer rack identified in paragraph (a) of this section is not required to be controlled. The documentation must be kept up-to-date (i.e., all such emission sources at a facility are identified in the documentation regardless of when the documentation was last compiled) and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

(b) For each storage tank subject to this subpart having a capacity of 18.9 cubic meters (5,000 gallons) or more that is not subject to control based on the criteria specified in Table 2 to this subpart, items 1 through 6, you must comply with the requirements specified in paragraphs (b)(1) through (3) of this section.

(1)(i) You must submit the information in § 63.2386(c)(1), (c)(2), (c)(3), and (c)(10)(i) in either the Notification of Compliance Status, according to the schedule specified in Table 12 to this subpart, or in your first Compliance report, according to the schedule specified in § 63.2386(b), whichever occurs first.

(ii)(A) If you submit your first Compliance report before your NOCS, the NOCS must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report. If none of the changes identified in paragraph (d) of this section have occurred since the filing of the first compliance report, you do not need to report the information specified in § 63.2386(c)(10)(i) when you submit your NOCS.

(B) If you submit your NOCS before your first compliance report, your first Compliance report must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes specified in paragraph (d) of this section have occurred since the filing of the NOCS.

(iii) If you are already submitting a NOCS or a first Compliance report under § 63.2386(c), you do not need to submit a separate NOCS or first Compliance report for each storage tank that meets the conditions identified in paragraph (b) of this section (i.e., a single NOCS or first Compliance report should be submitted).

(2)(i) You must submit a subsequent Compliance report according to the schedule in § 63.2386(b) whenever any of the events in paragraph (d) of this section occur, as applicable.

(ii) Your subsequent Compliance reports must contain the information in § 63.2386(c)(1), (2), (3) and, as applicable, in § 63.2386(d)(3) and (4). If you are already submitting a subsequent Compliance report under § 63.2386(d), you do not need to submit a separate subsequent Compliance report for each storage tank that meets the conditions identified in paragraph (b) of this section (i.e., a single subsequent Compliance report should be submitted).

(3) For each storage tank that meets the conditions identified in paragraph (b) of this section, you must keep documentation, including a record of the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid, that verifies the storage tank is not required to be controlled under this subpart. The documentation must be kept up-to-date and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

(c) For each transfer rack subject to this subpart that loads organic liquids but is not subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with the requirements specified in paragraphs (c)(1) through (3) of this section.

(1)(i) You must submit the information in § 63.2386(c)(1), (c)(2), (c)(3), and (c)(10)(i) in either the Notification of Compliance Status, according to the schedule specified in Table 12 to this subpart, or a first Compliance report, according to the schedule specified in § 63.2386(b), whichever occurs first.

(ii)(A) If you submit your first Compliance report before your NOCS, the NOCS must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes identified in paragraph (d) of this section have occurred since the filing of the first Compliance report. If none of the changes identified in paragraph (d) of this section have occurred since the filing of the first compliance report, you do not need to report the information specified in § 63.2386(c)(10)(i) when you submit your NOCS.

(B) If you submit your NOCS before your first compliance report, your first Compliance report must contain the information specified in § 63.2386(d)(3) and (4) if any of the changes specified in paragraph (d) of this section have occurred since the filing of the NOCS.

(iii) If you are already submitting a NOCS or a first Compliance report under § 63.2386(c), you do not need to submit a separate NOCS or first Compliance report for each transfer rack that meets the conditions identified in

paragraph (b) of this section (i.e., a single NOCS or first Compliance report should be submitted).

(2)(i) You must submit a subsequent Compliance report according to the schedule in § 63.2386(b) whenever any of the events in paragraph (d) of this section occur, as applicable.

(ii) Your subsequent Compliance reports must contain the information in § 63.2386(c)(1), (2), (3) and, as applicable, in § 63.2386(d)(3) and (4). If you are already submitting a subsequent Compliance report under § 63.2386(d), you do not need to submit a separate subsequent Compliance report for each transfer rack that meets the conditions identified in paragraph (c) of this section (i.e., a single subsequent Compliance report should be submitted).

(3) For each transfer rack that meets the conditions identified in paragraph (c) of this section, you must keep documentation, including the records specified in § 63.2390(d), that verifies the transfer rack is not required to be controlled under this subpart. The documentation must be kept up-to-date and must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form in a separate location.

(d) If one or more of the events identified in paragraphs (d)(1) through (4) of this section occur since the filing of the NOCS or the last Compliance report, you must submit a subsequent Compliance report as specified in paragraphs (b)(3) and (c)(3) of this section.

(1) Any storage tank or transfer rack became subject to control under this subpart EEE; or

(2) Any storage tank equal to or greater than 18.9 cubic meters (5,000 gallons) became part of the affected source but is not subject to any of the emission limitations, operating limits, or work practice standards of this subpart; or

(3) Any transfer rack (except those racks at which only unloading of organic liquids occurs) became part of the affected source; or

(4) Any of the information required in § 63.2386(c)(1), (2), or (3) has changed.

6. Section 63.2346 is amended by:

a. Revising paragraph (a)(2);

b. Revising paragraph (b) introductory text;

c. Revising paragraph (b)(2);

d. Revising paragraph (b)(3);

e. Revising paragraph (d) introductory text;

f. Revising paragraph (e); and

g. Removing and reserving paragraph (h) to read as follows:

§ 63.2346 What emission limitations, operating limits, and work practice standards must I meet?

(a) * * *

(2) Route emissions to fuel gas systems or back into a process as specified in 40 CFR part 63, subpart SS.

* * * * *

(b) *Transfer racks*. For each transfer rack that is part of the collection of transfer racks that meets the total actual annual facility-level organic liquid loading volume criterion for control in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (b)(1), (2), or (3) of this section for each arm in the transfer rack loading an organic liquid whose organic HAP content meets the organic HAP criterion for control in Table 2 to this subpart, items 7 through 10. For existing affected sources, you must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) of this section during the loading of organic liquids into transport vehicles. For new affected sources, you must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) and (ii) of this section during the loading of organic liquids into transport vehicles and containers. If the total actual annual facility-level organic liquid loading volume at any affected source is equal to or greater than the loading volume criteria for control in Table 2 to this subpart, but at a later date is less than the loading volume criteria for control, compliance with paragraph (b)(1), (2), or (3) of this section is no longer required. For new sources and reconstructed sources, as defined in § 63.2338(d) and (e), if at a later date, the total actual annual facility-level organic liquid loading volume again becomes equal to or greater than the loading volume criteria for control in Table 2 to this subpart, the owner or operator must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) and (ii) of this section immediately, as specified in § 63.2342(a)(3). For existing sources, as defined in § 63.2338(f), if at a later date, the total actual annual facility-level organic liquid loading volume again becomes equal to or greater than the loading volume criteria for control in Table 2 to this subpart, the owner or operator must comply with paragraph (b)(1), (b)(2), or (b)(3)(i) of this section immediately, as specified in § 63.2342(b)(3)(i), unless an alternative compliance schedule has been approved under § 63.2342(b)(3)(ii) and subject to the use limitation specified in § 63.2342(b)(3)(ii)(I).

* * * * *

(2) Route emissions to fuel gas systems or back into a process as specified in 40 CFR part 63, subpart SS.

(3)(i) Use a vapor balancing system that routes organic HAP vapors displaced from the loading of organic liquids into transport vehicles to the storage tank from which the liquid being loaded originated or to a process unit.

(ii) Use a vapor balancing system that routes the organic HAP vapors displaced from the loading of organic liquids into containers directly (e.g., no intervening tank or containment area such as a room) to the storage tank from which the liquid being loaded originated or to a process unit.

* * * * *

(d) *Transport vehicles*. For each transport vehicle equipped with vapor collection equipment that is loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (d)(1) of this section. For each transport vehicle without vapor collection equipment that is loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must comply with paragraph (d)(2) of this section.

* * * * *

(e) *Operating limits*. For each high throughput transfer rack, you must meet each operating limit in Table 3 to this subpart for each control device used to comply with the provisions of this subpart whenever emissions from the loading of organic liquids are routed to the control device. For each storage tank and low throughput transfer rack, you must comply with the requirements for monitored parameters as specified in subpart SS of this part for storage vessels and, during the loading of organic liquids, for low throughput transfer racks, respectively. Alternatively, you may comply with the operating limits in Table 3 to this subpart.

* * * * *

(h) [Reserved]

* * * * *

7. Section 63.2350 is amended by revising paragraph (c) to read as follows:

§ 63.2350 What are my general requirements for complying with this subpart?

* * * * *

(c) Except for emission sources not required to be controlled as specified in § 63.2343, you must develop and implement a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

8. Section 63.2354 is amended by revising paragraph (b)(3) to read as follows:

§ 63.2354 What performance tests, design evaluations, and performance evaluations must I conduct?

* * * * *

(b) * * *

(3) In addition to EPA Method 25 or 25A of 40 CFR part 60, appendix A, to determine compliance with the organic HAP or TOC emission limit, you may use EPA Method 18 of 40 CFR part 60, appendix A, as specified in paragraph (b)(3)(i) of this section. As an alternative to EPA Method 18, you may use ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS) (incorporated by reference, see § 63.14), under the conditions specified in paragraph (b)(3)(ii) of this section.

(i)(A) If you use EPA Method 18 to measure compliance with the percentage efficiency limit, you must first determine which organic HAP are present in the inlet gas stream (*i.e.*, uncontrolled emissions) using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, you must analyze samples collected as specified in EPA Method 18, simultaneously at the inlet and outlet of the control device. Quantify the emissions for the same organic HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(B) If you use EPA Method 18 of 40 CFR part 60, appendix A, to measure compliance with the emission concentration limit, you must first determine which organic HAP are present in the inlet gas stream using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, analyze samples collected as specified in EPA Method 18 at the outlet of the control device. Quantify the control device outlet emission concentration for the same organic HAP identified as present in the inlet or uncontrolled gas stream.

(ii) You may use ASTM D6420–99 as an alternative to EPA Method 18 if the target concentration is between 150 ppbv and 100 ppmv and either of the conditions specified in paragraph (b)(2)(ii)(A) or (B) of this section exists. For target compounds not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, you may not use ASTM D6420–99.

(A) The target compounds are those listed in Section 1.1 of ASTM D6420–99; or

(B) For target compounds not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in ASTM D6420–99, Section 10.5.3, must be followed, met, documented, and submitted with the data report, even if there is no moisture condenser used or the compound is not considered water-soluble.

* * * * *

9. Section 63.2362 is amended by revising paragraph (b)(1) to read as follows:

§ 63.2362 When must I conduct subsequent performance tests?

* * * * *

(b)(1) For each transport vehicle that you own that is equipped with vapor collection equipment and that is loaded with organic liquids at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must perform the vapor tightness testing required in Table 5 to this subpart, item 2, on that transport vehicle at least once per year.

* * * * *

10. Section 63.2382 is amended by revising paragraphs (d)(2)(iv), (v), (vi), (vii), and (viii) to read as follows:

§ 63.2382 What notifications must I submit and when and what information should be submitted?

* * * * *

(d) * * *

(2) * * *

(iv) Descriptions of worst-case operating and/or testing conditions for the control device(s).

(v) Identification of emission sources subject to overlapping requirements described in § 63.2396 and the authority under which you will comply.

(vi) The applicable information specified in § 63.1039(a)(1) through (3) for all pumps and valves subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 4.

(vii) If you are complying with the vapor balancing work practice standard for transfer racks according to Table 4 to this subpart, item 3.a, include a statement to that effect and a statement that the pressure vent settings on the affected storage tanks are greater than or equal to 2.5 pounds per square inch gauge (psig).

(viii) The information specified in § 63.2386(c)(10)(i), unless the information has already been submitted with the first Compliance report. If the information specified in § 63.2386(c)(10)(i) has already been submitted with the first Compliance report, the information specified in § 63.2386(d)(3) and (4), as applicable, shall be submitted instead.

11. Section 63.2386 is amended by:

a. Revising paragraph (b)(3);

b. Revising paragraph (c)(4);

c. Redesignating paragraph (c)(10) as (c)(9) and paragraph (c)(9) as (c)(10);

e. Revising newly designated paragraphs (c)(9) and (c)(10);

f. Revising paragraph (d) introductory text;

g. Removing paragraph (d)(3); and

h. Adding new paragraphs (d)(3) and (d)(4) to read as follows:

§ 63.2386 What reports must I submit and when and what information is to be submitted in each?

* * * * *

(b) * * *

(3) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) and (2) of this section.

(c) * * *

(4) Any changes to the information listed in § 63.2382(d)(2) that have occurred since the submittal of the Notification of Compliance Status.

* * * * *

(9) A listing of all transport vehicles into which organic liquids were loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, during the previous 6 months for which vapor tightness documentation as required in § 63.2390(c) was not on file at the facility.

(10)(i) A listing of all transfer racks (except those racks at which only unloading of organic liquids occurs) and of tanks greater than or equal to 18.9 cubic meters (5,000 gallons) that are part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart.

(ii) If the information specified in paragraph (c)(10)(i) of this section has already been submitted with the NOCS, the information specified in paragraphs (d)(3) and (4) of this section, as applicable, shall be submitted instead.

(d) *Subsequent Compliance reports.* Subsequent Compliance reports must contain the information in paragraphs (c)(1) through (9) of this section and, where applicable, the information in

paragraphs (d)(1) through (4) of this section.

* * * * *

(3)(i) A listing of any storage tank that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 1 through 6, since the filing of the last Compliance report.

(ii) A listing of any transfer rack that became subject to controls based on the criteria for control specified in Table 2 to this subpart, items 7 through 10, since the filing of the last Compliance report.

(4)(i) A listing of tanks greater than or equal to 18.9 cubic meters (5,000 gallons) that became part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart, since the last Compliance report.

(ii) A listing of all transfer racks (except those racks at which only the unloading of organic liquids occurs) that became part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart, since the last Compliance report.

* * * * *

12. Section 63.2390 is amended by:

a. Revising paragraphs (a) and (b);

b. Revising paragraph (c) introductory text;

c. Redesignating paragraph (c)(3) as (d);

d. Adding a new paragraph (c)(3); and

e. Revising newly designated paragraph (d) to read as follows:

§ 63.2390 What records must I keep?

(a) For each emission source identified in § 63.2338 that does not require control under this subpart, you must keep all records identified in § 63.2343.

(b) For each emission source identified in § 63.2338 that does require control under this subpart:

(1) You must keep all records identified in subpart SS of this part and in Table 12 to this subpart that are applicable, including records related to notifications and reports, SSM, performance tests, CMS, and performance evaluation plans; and

(2) You must keep the records required to show continuous compliance, as required in subpart SS of this part and in Tables 8 through 10 to this subpart, with each emission limitation, operating limit, and work practice standard that applies to you.

(c) For each transport vehicle into which organic liquids are loaded at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, you must keep the applicable records in paragraphs (c)(1) and (2) of this section or alternatively the verification records in paragraph (c)(3) of this section.

* * * * *

(3) In lieu of keeping the records specified in paragraph (c)(1) or (2) of this section, as applicable, the owner or operator shall record that the verification of DOT tank certification or Method 27 of appendix A to 40 CFR part 60 testing, required in Table 5 to this subpart, item 2, has been performed. Various methods for the record of verification can be used, such as: a check-off on a log sheet, a list of DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on site that do not have the appropriate documentation.

(d) You must keep records of the total actual annual facility-level organic liquid loading volume as defined in § 63.2406 through transfer racks to document the applicability, or lack thereof, of the emission limitations in Table 2 to this subpart, items 7 through 10.

13. Section 63.2394 is amended by revising paragraph (a) to read as follows:

§ 63.2394 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1), including records stored in electronic form at a separate location.

* * * * *

14. Section 63.2396 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.2396 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with other regulations for storage tanks.*—(1) After the compliance dates specified in § 63.2342, you are in compliance with the provisions of this subpart for any storage tank that is assigned to the OLD affected source and that is both controlled with a floating roof and is in compliance with the provisions of either 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, except that records shall be kept for 5 years rather than 2 years for storage tanks that are assigned to the OLD affected source.

(2) After the compliance dates specified in § 63.2342, you are in compliance with the provisions of this subpart for any storage tank with a fixed roof that is assigned to the OLD affected source and that is both controlled with a closed vent system and control device and is in compliance with either 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, except that you must comply with the monitoring, recordkeeping, and reporting requirements in this subpart.

(3) As an alternative to paragraphs (a)(1) and (2) of this section, if a storage tank assigned to the OLD affected source is subject to control under 40 CFR part 60, subpart Kb, or 40 CFR part 61, subpart Y, you may elect to comply only with the requirements of this subpart for storage tanks meeting the applicability criteria for control in Table 2 to this subpart.

(b) *Compliance with other regulations for transfer racks.* After the compliance dates specified in § 63.2342, if you have a transfer rack that is subject to 40 CFR part 61, subpart BB, and that transfer rack is in OLD operation, you must meet all of the requirements of this subpart for that transfer rack when the transfer rack is in OLD operation during the loading of organic liquids.

* * * * *

15. Section 63.2402 is amended by revising paragraphs (b)(2), (b)(3), and (b)(4) to read as follows:

§ 63.2402 Who implements and enforces this subpart?

* * * * *

(b) * * *

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

16. Section 63.2406 is amended by:

a. Revising the introductory text;

b. Revising the definitions of ''Shutdown,'' ''Startup,'' ''Transfer rack,'' ''Vapor balancing system,'' and ''Vapor collection system,'' and paragraph (3) of the definition for ''Storage tank;'' and

c. Adding in alphabetical order definitions for ''Bottoms receivers,'' ''High throughput transfer rack,'' ''Low throughput transfer rack,'' ''Surge control vessel,'' and ''Total actual annual facility-level organic liquid loading volume'' to read as follows:

§ 63.2406 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, 40 CFR part 63, subparts H, PP, SS, TT, UU, and WW, and in this section. If the same term is defined in another subpart and in this section, it will have the meaning given in this section for purposes of this

subpart. Notwithstanding the introductory language in § 63.921, the terms ''container'' and ''safety device'' shall have the meaning found in this subpart and not in § 63.921.

* * * * *

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further processing downstream.

* * * * *

High throughput transfer rack means those transfer racks that transfer into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) a total of 11.8 million liters per year or greater of organic liquids.

* * * * *

Low throughput transfer rack means those transfer racks that transfer into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) less than 11.8 million liters per year of organic liquids.

* * * * *

Shutdown means the cessation of operation of an OLD affected source, or portion thereof (other than as part of normal operation of a batch-type operation), including equipment required or used to comply with this subpart, or the emptying and degassing of a storage tank. Shutdown as defined here includes, but is not limited to, events that result from periodic maintenance, replacement of equipment, or repair.

Startup means the setting in operation of an OLD affected source, or portion thereof (other than as part of normal operation of a batch-type operation), for any purpose. Startup also includes the placing in operation of any individual piece of equipment required or used to comply with this subpart including, but not limited to, control devices and monitors.

Storage tank * * *

(3) Bottoms receivers;

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within chemical manufacturing processes when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

* * * * *

Total actual annual facility-level organic liquid loading volume means the total facility-level actual volume of organic liquid loaded for transport within or out of the facility through transfer racks that are part of the affected source into transport vehicles (for existing affected sources) or into transport vehicles and containers (for new affected sources) based on a 3-year rolling average, calculated annually.

(1) For existing affected sources, each 3-year rolling average is based on actual facility-level loading volume during each calendar year (January 1 through December 31) in the 3-year period. For calendar year 2004 only (the first year of the initial 3-year rolling average), if an owner or operator of an affected source does not have actual loading volume data for the time period from January 1, 2004, through February 2, 2004 (the time period prior to the effective date of the OLD NESHAP), the owner or operator shall compute a facility-level loading volume for this time period as follows: At the end of the 2004 calendar year, the owner or operator shall calculate a daily average facility-level loading volume (based on the actual loading volume for February 3, 2004, through December 31, 2004) and use that daily average to estimate the facility-level loading volume for the period of time from January 1, 2004, through February 2, 2004. The owner or operator shall then sum the estimated facility-level loading volume from January 1, 2004, through February 2, 2004, and the actual facility-level loading volume from February 3, 2004, through December 31, 2004, to calculate the annual facility-level loading volume for calendar year 2004.

(2)(i) For new affected sources, the 3-year rolling average is calculated as an average of three 12-month periods. An owner or operator must select as the beginning calculation date with which to start the calculations as either the initial startup date of the new affected source or the first day of the calendar month following the month in which startup occurs. Once selected, the date with which the calculations begin cannot be changed.

(ii) The initial 3-year rolling average is based on the projected maximum facility-level annual loading volume for each of the 3 years following the selected beginning calculation date. The second 3-year rolling average is based on actual facility-level loading volume for the first year of operation plus a new projected maximum facility-level annual loading volume for second and third years following the selected beginning calculation date. The third 3-year rolling average is based on actual facility-level loading volume for the first 2 years of operation plus a new projected maximum annual facility-level loading volume for the third year following the beginning calculation date. Subsequent 3-year rolling averages are based on actual facility-level loading volume for each year in the 3-year rolling average.

Transfer rack means a single system used to load organic liquids into, or unload organic liquids out of, transport vehicles or containers. It includes all loading and unloading arms, pumps, meters, shutoff valves, relief valves, and other piping and equipment necessary for the transfer operation. Transfer equipment and operations that are physically separate (*i.e.*, do not share common piping, valves, and other equipment) are considered to be separate transfer racks.

* * * * *

Vapor balancing system means a piping system that collects organic HAP vapors displaced from transport vehicles or containers during loading and routes the collected vapors to the storage tank from which the liquid being loaded originated or compresses the vapors for direct conveyance to a chemical manufacturing process unit. For containers, the piping system must route the displaced vapors directly to the appropriate storage tank or process unit in order to qualify as a vapor balancing system.

Vapor collection system means any equipment located at the source (*i.e.*, at the OLD operation) that is not open to the atmosphere; that is composed of piping, connections, and, if necessary, flow-inducing devices; and that is used for:

(1) Containing and conveying vapors displaced during the loading of transport vehicles to a control device;

(2) Containing and directly conveying vapors displaced during the loading of containers; or

(3) Vapor balancing. This does not include any of the vapor collection equipment that is installed on the transport vehicle.

* * * * *

17. Table 2 to Subpart EEEE of Part 63 is amended by revising entries 1, 6, 7, 8, 9, and 10 to read as follows:

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS

* * * * * * *

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS; OR ii. Comply with the work practice standards specified in Table 4 to this subpart, items 1.a or 1.b for tanks storing liquids described in that table.
.....	b. The stored organic liquid is crude oil	i. See the requirement in item 1.a.i or 1.a.ii of this table.
* *	* * *	* *
6. A storage tank at an existing, reconstructed, or new affected source meeting the capacity criteria specified in Table 2 of this subpart, items 1 through 5.	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥76.6 kilopascals (11.1 psia).	i. Reduce emissions of total organic HAP (or, upon approval, TOC) by at least 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS; OR ii. Comply with the work practice standards specified in Table 4 to this subpart, item 2.a, for tanks storing the liquids described in that table.
7. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons and less than 10 million gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 98% by weight and is being loaded into a transport vehicle.	i. For all such loading arms at the rack, reduce emissions of total organic HAP (or, upon approval, TOC) from the loading of organic liquids either by venting the emissions that occur during loading through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS, achieving at least 98 weight-percent HAP reduction, OR, as an option, to an exhaust concentration less than or equal to 20 ppmv, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3 of Table 4 to this subpart.
8. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks is ≥10 million gallons.	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is less than 800,000 gallons.	a. The total Table 1 organic HAP content of the organic liquid being loaded through one or more of the transfer rack's arms is at least 25% by weight and is being loaded into a transport vehicle.	i. See the requirements in items 7.a.i and 7.a.ii of this table.
	b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS—Continued

* * * * * * *

If you own or operate . . .	And if . . .	Then you must . . .
10. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks is equal to or greater than 800,000 gallons.	a. One or more of the transfer rack's arms is loading an organic liquid into a transport vehicle. b. One or more of the transfer rack's arms is filling a container with a capacity equal to or greater than 55 gallons.	i. See the requirements in items 7.a.i and 7.a.ii of this table. i. For all such loading arms at the rack during the loading of organic liquids, comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls; OR ii. During the loading of organic liquids, comply with the work practice standards specified in item 3.a of Table 4 to this subpart.

18. Table 3 to Subpart EEEE of Part 63 is amended by revising entries 3, 5, and 6 to read as follows:

TABLE 3 TO SUBPART EEEE OF PART 63.—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

* * * * * * *

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
* * *	* * * *
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
* * *	* * * *
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Achieve a pressure reduction during each adsorption bed regeneration cycle greater than or equal to the pressure reduction established during the design evaluation or performance test that demonstrated compliance with the emission limit.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
* * *	* * * *

19. Table 4 to Subpart EEEE to Part 63 is revised to read as follows:

TABLE 4 TO SUBPART EEEE OF PART 63.—WORK PRACTICE STANDARDS

[As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .]

For each . . .	You must . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), if you elect to meet 40 CFR part 63, subpart WW (control level 2), requirements as an alternative to the emission limit in Table 2 to this subpart, items 1 through 5; or b. Comply with the requirements of § 63.984 for routing emissions to a fuel gas system or back to a process.
2. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, item 6.	a. Comply with the requirements of § 63.984 for routing emissions to a fuel gas system or back to a process.
3. Transfer rack subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. If the option of a vapor balancing system is selected, install and, during the loading of organic liquids, operate a system that meets the requirements in Table 7 to this subpart, item 3.b.i. and item 3.b.ii, as applicable; or b. Comply with the requirements of § 63.984 during the loading of organic liquids, for routing emissions to a fuel gas system or back to a process.
4. Pump, valve, and sampling connection that operates in organic liquids service at least 300 hours per year at an existing, reconstructed, or new affected source.	Comply with the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H.
5. Transport vehicles equipped with vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles, and comply with the provisions in 40 CFR 60.502(f), (g), (h), and (i), except substitute the term transport vehicle at each occurrence of tank truck or gasoline tank truck in those paragraphs.
6. Transport vehicles equipped without vapor collection equipment that are loaded at transfer racks that are subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10.	Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR 180 (cargo tanks) or 49 CFR 173.31 (tank cars).

20. Table 5 to Subpart EEEE of Part 63 is revised to read as follows:

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS

[As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows]

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
1. Each existing, each reconstructed, and each new affected source using a nonflare control device to comply with an emission limit in Table 2 to this subpart, items 1 through 10.	a. A performance test to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, OR the exhaust concentration of each combustion device; OR	i. § 63.985(b)(1)(ii), § 63.988(b), § 63.990(b), or § 63.995(b).	(1) EPA Method 1 or 1A in appendix A of 40 CFR part 60, as appropriate.	(A) Sampling port locations and the required number of traverse points.	(i) Sampling sites must be located at the inlet and outlet of each control device if complying with the control efficiency requirement or at the outlet of the control device if complying with the exhaust concentration requirement; AND (ii) the outlet sampling site must be located at each control device prior to any releases to the atmosphere.
			(2) EPA Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A of 40 CFR part 60, as appropriate.	(A) Stack gas velocity and volumetric flow rate.	See the requirements in items 1.a.i.(1)(A) (i) and (ii) of this table.

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS—Continued

[As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows]

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
			(3) EPA Method 3 or 3B in appendix A of 40 CFR part 60, as appropriate.	(A) Concentration of CO_2 and O_2 and dry molecular weight of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(4) EPA Method 4 in appendix A of 40 CFR part 60.	(A) Moisture content of the stack gas.	See the requirements in items 1.a.i.(1)(A)(i) and (ii) of this table.
			(5) EPA Method 18, 25, or 25A in appendix A of 40 CFR part 60, as appropriate, or EPA Method 316 in appendix A of 40 CFR part 63 for measuring formaldehyde.	(A) Total organic HAP (or, upon approval, TOC), or formaldehyde emissions.	(i) The organic HAP used for the calibration gas for EPA Method 25A must be the single organic HAP representing the largest percent by volume of emissions; AND (ii) During the performance test, you must establish the operating parameter limits within which total organic HAP (or, upon approval, TOC) emissions are reduced by the required weight-percent or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
	b. A design evaluation (for nonflare control devices) to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, or the exhaust concentration of each combustion control device.	§ 63.985(b)(1)(i)	.....	.....	During a design evaluation, you must establish the operating parameter limits within which total organic HAP, (or, upon approval, TOC) emissions are reduced by at least 95 weight-percent or as an option to 20 ppmv exhaust concentration.
2. Each transport vehicle that you own that is equipped with vapor collection equipment and is loaded with organic liquids at a transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	A performance test to determine the vapor tightness of the tank and then repair as needed until it passes the test.	.....	EPA Method 27 in appendix A of 40 CFR part 60.	Vapor tightness	The pressure change in the tank must be no more than 250 pascals (1 inch of water) in 5 minutes after it is pressurized to 4,500 pascals (18 inches of water).

21. Table 6 to Subpart EEEE of Part 63 is amended by revising entry 2 to read as follows:

TABLE 6 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

For each . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
* * *	* * *	* * *
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	Reduce total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids by at least 98 weight-percent, or as an option for combustion devices to an exhaust concentration of ≤ 20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions from the loading of organic liquids, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 98 weight-percent or as an option for combustion devices to an exhaust concentration of ≤ 20 ppmv.

22. Table 7 to Subpart EEEE of Part 63 is revised to read as follows:

TABLE 7 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 or 2.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. After emptying and degassing, you visually inspect each internal floating roof before the refilling of the storage tank and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the refilling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. You meet the requirements in § 63.984(b) and submit the statement of connection required by § 63.984(c).
2. Storage tank at a reconstructed or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 3 through 5.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. You visually inspect each internal floating roof or before the initial filling of the storage tank, and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the initial filling of the storage tank.
	b. Route emissions to a fuel gas system or back to a process.	i. See item 1.b.i of this table.
3. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Load organic liquids only into transport vehicles having current vapor tightness certification as described in Table 4 to this subpart, item 5 and item 6.	i. You comply with the provisions specified in Table 4 to this subpart, item 5 or item 6, as applicable.
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into transport vehicles to the storage tank from which the liquid being loaded originated or to a process unit. ii. You design and operate the vapor balancing system to route organic HAP vaports displaced from loading of organic liquids into containers directly (e.g., no intervening tank or containment area such as a room) to the storage tank from which the liquid being loaded originated or to a process unit.
	c. Route emissions to a fuel gas system or bank to a process.	i. See item 1.b.i of this table.
4. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service ≥300 hours per year at an existing, reconstructed, or new affected source.	a. Carry out a leak detection and repair program or equivalent control according to one of the subparts listed in Table 4 to this subpart, item 4.a.	i. You specify which one of the control programs listed in Table 4 to this subpart you have selected, OR ii. Provide written specifications for your equivalent control approach.

23. Table 8 to Subpart EEEE of Part 63 is revised to read as follows:

TABLE 8 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

[As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the emission limits for existing, reconstructed, or new affected sources according to the following table]

For each . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control devices by 95 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378; AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit.
2. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Reduce total organic HAP (or, upon approval, TOC) emissions during the loading of organic liquids from the closed vent system and control device by 98 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378 during loading of organic AND ii. Maintaining the operating limits established during the design evaluation or performance test that demonstrated compliance with the emission limit during the loading of organic liquids.

24. Table 9 to Subpart EEEE of Part 63 is amended by revising entries 2, 3, 4, 5, 6, and 7 to read as follows:

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

* * * * * * *

For each existing, reconstructed and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
* *	* * *	* *
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Replacing the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the daily average temperature difference across the catalyst bed greater than or equal to the minumum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required § 63.998.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

* * * * * * *

For each existing, reconstructed and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration in the absorber exhaust and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND.	i. Continuously monitoring the scrubbing liquid temperature and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	ii. Maintaining the difference between the specific gravities greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Keeping the applicable records required in § 63.998.
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the exit of the condenser less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration at the condenser exit and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit: AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the daily average organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Maintaining the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated with the emission limit; AND
	Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test; AND	ii. Maintaining the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit: AND

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, reconstructed and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	Achieve greater than or equal to the pressure reduction during the adsorption bed regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit.	iii. Achieving greater than or equal to the pressure reduction during the regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iv. Keeping the applicable records required in § 63.998.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	i. Continuously monitoring the organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Replace the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Replacing the existing adsorbent, in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Maintaining the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND iii. Keeping the applicable records required in § 63.998.
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Maintain a pilot flame in the flare at all times that vapors may be vented to the flare (§ 63.11(b)(5)); AND	i. Continuously operating a device that detects the presence of the pilot flame; ii. Keeping the applicable records required in § 63.998.
	b. Maintain a flare flame at all times that vapors are being vented to the flare § 63.11(b)(5)); AND	i. Maintaining a flare flame at all times that vapors are being vented to the flare; AND ii. Keeping the applicable records required in § 63.998.
	c. Operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§ 63.11(b)(4)); AND EITHER	i. Operating the flare with no visible emissions exceeding the amount allowed; AND ii. Keeping the applicable records required in § 63.998.
	d.1. Operate the flare with an exit velocity that is within the applicable limits in § 63.11(b)(7) and (8) and with a net heating value of the gas being combusted greater than the applicable minimum value in § 63.11(b)(6)(ii); OR	i. Operating the flare within the applicable exit velocity limits; AND ii. Operating the flare with the gas heating value greater than the applicable minimum value; AND iii. Keeping the applicable records required in § 63.998.
	2. Adhere to the requirements in § 63.11(b)(6)(i).	i. Operating the flare within the applicable limits in § 63.11(b)(6)(i); AND ii. Keeping the applicable records required in § 63.998.

* * * * * * *

25. Table 10 to Subpart EEEE of Part 63 is amended by revising entries 1, 2, 4, and 5 to read as follows:

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

* * * * * * *

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
1. Internal floating roof (IFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity, and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR once per year (§ 63.1063(d)(2)); AND ii. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(1), (d)(1), and (e)); AND iii. Keeping the tank records required in § 63.1065.
2. External floating roof (EFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity, and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each EFR either each time the storage tank is completely emptied and degassed or every 10 years, whichever occurs first (§ 63.1063(c)(2), (d), and (e)); AND ii. Performing seal gap measurements on the secondary seal of each EFR at least once every year, and on the primary seal of each EFR at least every 5 years (§ 63.1063(c)(2), (d), and (e)); AND iii. Keeping the tank records required in § 63.1065.
* * * * * * *		
4. Transfer rack that is subject to control based on the criteria specified in Table 2 to this subpart, items 7 through 10, at an existing, reconstructed, or new affected source.	a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.	i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 5 or 6, as applicable.
	b. Install and, during the loading of organic liquids, operate a vapor balancing system.	i. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle or the filling of a container using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 4. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards.
	c. Route emissions to a fuel gas system or back to a process.	i. Continuing to meet the requirements specified in § 63.984(b).
5. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service at least 300 hours per year.	a. Comply with the requirements of 40 CFR part 63, subpart TT, UU, or H.	i. Carrying out a leak detection and repair program in accordance with the subpart selected from the list in item 5.a of this table.
* * * * * * *		

26. Table 11 to Subpart EEEE of Part 63 is revised to read as follows:

TABLE 11 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.2386(a) and (b), you must submit compliance reports and startup, shutdown, and malfunction reports according to the following table]

You must submit . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report, or Periodic Report	a. The information specified in § 63.2386(c), (d), (e). If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSM plan, the report must also include the information in § 63.10(d)(5)(i); AND	Semiannually, and it must be postmarked by January 31 or July 31, in accordance with § 63.2386(b).

TABLE 11 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

[As stated in § 63.2386(a) and (b), you must submit compliance reports and startup, shutdown, and malfunction reports according to the following table]

You must submit . . .	The report must contain . . .	You must submit the report . . .
	b. The information required by 40 CFR part 63, subpart TT, UU, or H, as applicable, for pumps, valves, and sampling connections; AND	See the submission requirement in item 1.a of this table.
	c. The information required by § 63.999(c); AND	See the submission requirement in item 1.a of this table.
	d. The information specified in § 63.1066(b) including: notification of inspection, inspection results, requests for alternate devices, and requests for extensions, as applicable.	See the submission requirement in item 1.a of this table.
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period, and you took an action that was not consistent with your SSM plan.	a. The information required in § 63.10(d)(5)(ii)	i. By letter within 7 working days after the end of the event unless you have made alternative arrangements the permitting authority (§ 63.10(d)(5)(ii)).

28. Table 12 to Subpart EEEE of Part 63 is amended by revising entries § 63.6(e)(3), § 63.7(g), § 63.9(h)(1)–(6), § 63.9(j), and § 63.10(e)(3)(iv)–(v) to read as follows:

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

* * * * * * *

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	*
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) Plan.	Requirement for SSM plan; content of SSM plan; actions during SSM.	Yes; however, the 2-day reporting requirement in paragraph § 63.6(e)(3)(iv) does not apply and § 63.6(e)(3) does not apply to emissions sources not requiring control.
*	*	*	*
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status (NOCS); keep data for 5 years.	Yes; however, performance test data is to be submitted with the NOCS according to schedule specified in § 63.9(h)(1)–(6) of this table.
*	*	*	*
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes; however, there are no opacity standards and all initial NOCS, including all performance test data, are to be submitted at the same time, either within 240 days after the compliance date or within 60 days after the last performance test demonstrating compliance has been completed, whichever occurs first.
*	*	*	*
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes; except for emission sources not required to be controlled as specified in § 63.2343.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	*
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports.	Requirement to revert to quarterly submission if there is an excess emissions or parameter monitoring exceedance (now defined as deviations); provision to request semi-annual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes.
*	*	*	*

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Part III

Environmental Protection Agency

40 CFR Part 80

Revisions to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2004–0029; FRL–7996–2]

RIN 2060–AK62

Revisions to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: On November 5, 2001, we published a direct final rule and concurrent notice of proposed rulemaking to revise the requirements on variability in the composition of additives certified EPA's Gasoline Deposit Control Program. We received adverse comments on two of the amendments contained in the direct final rule and proposed rule. Consequently, we issued a partial withdrawal notice on January 24, 2002, to withdraw the amendments that received adverse comments. This action addresses the public comments received on the withdrawn amendments. We found the adverse comments on the withdrawn amendments unpersuasive. However, we agreed with one commenter's suggestion that additional clarifying language would be useful in one of the subject amendments to prevent any potential for misinterpretation. Consequently, today's action implements the previously withdrawn amendments with the addition of clarifying language. The changes to the regulatory requirements made by this action address additive manufacturer concerns that compliance with the previous requirements would be burdensome and difficult, while maintaining the emissions control benefits of the gasoline deposit control program.

DATES: This final rule is effective on November 14, 2005.

ADDRESSES: EPA established a docket for this action under Docket ID No. OAR–2004–0029.[1] All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some material 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 EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket's 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 EPA Docket Center is (202) 566–1742.

Access to Rulemaking Documents Through the Internet:

Today's action is available electronically on the day of publication from EPA's Federal Register Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/.* (Either select a desired date or use the Search feature.)

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.

FOR FURTHER INFORMATION CONTACT: Jeff Herzog, Assessment and Standards Division, Office of Transportation and Air Quality (Mail Code: AAFUEL), Environmental Protection Agency, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214–4227, fax number: (734) 214–4816, e-mail address: *herzog.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

Entities potentially regulated by this action are those that manufacture gasoline deposit control (detergent) additives. Regulated categories and entities include:

Category	NAICS code	SIC code	Example of regulated entities
Industry	325998	2899	Gasoline deposit control additive manufacturers.

a. North American Industry Classification System (NAICS).

b. Standard Industrial Classification (SIC) system code.

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 organization is regulated by this action, you should carefully examine the applicability requirements in § 80.161(a), the detergent certification requirements in § 80.161(b), the program controls and prohibitions in § 80.168, and other related program requirements in Subpart G, title 40, of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Overview of Action

Background on the Gasoline Deposit Control Program:

The accumulation of deposits in the engine and fuel supply systems of gasoline motor vehicles can significantly increase emissions of nitrous oxides (NO_X), hydrocarbons (HC), and carbon monoxide (CO). Pursuant to the requirements of Section 211(l) of the Clean Air Act (CAA), EPA implemented a gasoline deposit control program which requires that all gasoline sold for use in motor vehicles in the United States (U.S.) contain additives that are effective in limiting the formation of such deposits (40 CFR part 80). Specifically, EPA requires that deposit control additives be certified for their ability to control fuel injector deposits (FID) and intake valve deposits (IVD) in EPA-specified test procedures.

[1] Paper copies of materials associated with the notice of proposed rulemaking that preceded this final rule are contained in the legacy docket. Legacy docket number A–2001–15.

All gasoline is required to contain a certified deposit control (DC) additive at least at the lowest additive concentration (LAC) established during certification testing. The final requirements of EPA's gasoline deposit control program were published on July 5, 1996, and became effective August 1, 1997 (61 FR 35309).

Gasoline deposit control additives act to control deposits by both inhibiting the formation of deposits and by removing existing deposits. DC additives interfere with the formation of deposits by coating the surfaces within the fuel supply system so that deposits do not adhere readily and by keeping deposit precursors in solution so that they are carried through the combustion process. The process by which DC additives remove existing deposits depends on two functionalities, a detergent function to free the deposit from the surface and a carrier oil function to rinse the deposit-detergent amalgam off the surface. Many deposit control additives currently in use are composed of at least two separate components, one to provide the detergent action (the ''detergent'') and one to provide the carrier oil action. Polyetheramine-based detergent additive packages combine the detergent and carrier oil functions into a single chemical additive.

Variation in the composition of gasoline deposit control additives (DC additives) from one production batch to the next could have a substantial impact on their ability to control deposits, and on the emissions benefits of EPA's deposit control program. To ensure that the in-use performance of gasoline deposit control additives is consistent with that demonstrated in the certification testing, EPA implemented requirements limiting the variability in the composition of additive production batches (from the composition reported in the additive's certification).

During development of EPA's deposit control additive program, automobile manufacturers urged EPA to implement a requirement to control combustion chamber deposits (CCD) as well as FID/IVD. The primary focus of automobile manufacturer concerns was the potential contribution to the formation of CCD from the use of high concentrations of some additives designed to control FID/IVD. Automobile manufacturers suggested that to limit the potential contribution of FID/IVD control additives to the formation of CCD, EPA should enact a maximum unwashed gum concentration for additized gasoline. Since gasoline unwashed gum level roughly correlates with detergent additive concentration, such a requirement would act to set a maximum allowed concentration for detergent additive packages. EPA deferred to enact a CCD control requirement due to lack of data with which to evaluate the potential benefits, costs, and appropriate control measures.

Today's Action:

The Chemical Manufacturers Association (CMA, which is now the American Chemistry Council) notified EPA that certain aspects of the requirements to limit variability in DC additive composition would be burdensome and difficult for additive manufactures to comply with. CMA also stated that other related provisions needed to be clarified. Accordingly, CMA filed a petition for review of these requirements [2] and entered into a process with EPA to evaluate alternatives to the requirements of concern. Through this process, a settlement agreement to resolve CMA's petition for review was reached with EPA. Consistent with this settlement agreement, we published a direct final rule on November 5, 2001 (66 FR 55885) and concurrent notice of proposed rulemaking (NPRM, 66 FR 55905) to revise the requirements on variability in the composition of additives under the gasoline deposit control program. We received adverse comments on two of the amendments contained in the direct final rule and NPRM. Consequently, we issued a partial withdrawal notice on January 24, 2002 (67 FR 3440) to withdraw the amendments on which we received adverse comments.

We have evaluated all of the comments received on the previously withdrawn amendments and find the adverse comments unpersuasive. However, we agree with one commenter's suggestion that additional clarifying language would be useful in one of the subject amendments to prevent any potential for misinterpretation. Therefore, today's action implements the previously withdrawn amendments with the addition of clarifying language similar to that suggested in the public comments. The change to the regulatory requirements made by this action addresses additive manufacturer concerns that compliance with the original requirements would be burdensome and difficult, while maintaining the emissions control benefits of the gasoline deposit control program.

[2] Petition for review under the Clean Air Act's judicial review provisions, *Chemical Manufacturers Association* v. *U.S. EPA,* No. 96–1297, August 26, 1996.

III. What Revisions Does This Rule Make to the Requirements for Deposit Control Additives?

The requirements on DC additives amended by today's action are contained in §§ 80.162(a)(3)(i)(B) and 80.162(a)(3)(ii) of Subpart G, title 40 of the CFR. The following sections contain a discussion of the amendments to these requirements, including: EPA's reasons for establishing them as we originally did, the changes to these requirements made by today's action, and our evaluation of the public comments on the proposed revisions to these requirements.

A. Revisions to § 80.162(a)(3)(i)(B)

The current regulatory requirements in § 80.162(a)(3)(i)(B) state that:

(i) The composition of a detergent additive reported in a single additive registration (and the detergent additive product sold under a single additive registration) may not:

* * * * *

(B) Include a range of concentration for any detergent-active component such that, if the component were present in the detergent additive package at the lower bound of the reported range, the deposit control effectiveness of the additive package would be reduced as compared with the level of effectiveness demonstrated during certification testing.

EPA's goal in establishing this requirement in its current form was to ensure that each detergent-active component of a deposit control additive is present in additive production batches at no less the concentration needed to meet EPA's deposit control performance requirements. Consistent with the settlement agreement reached with CMA, we proposed to amend this requirement to make it clear that additive manufactures could produce a DC additive package for sale that contained the component additives at a higher concentration than that used during additive certification testing.

In its comments on the NPRM, the Alliance of Automobile Manufacturers (AAM) stated that allowing the ratio of the different detergent-active components in a detergent additive package to vary could impact the deposit control efficacy of some or all of the components in the detergent additive package.[3] As an example, AAM stated that if the concentration of carrier oil is increased relative to the detergent component, a decrease in the detergency performance of the additive package would be expected. Based on this

[3] EPA docket A–2001–15, docket item IV–D–03.

objection, AAM stated that EPA should not amend § 80.162(a)(3)(i)(B).

In a letter to EPA, the Fuel Additive Task Group within the American Chemistry Council (ACC) stated that there is no reason to expect that if one detergent-active component (such as a detergent) is present at the same concentration as in the test fuel used during additive certification testing while another detergent-active component (such as a carrier oil) is increased above the level present in the certification test fuel, there would be a decrease in detergency performance.[4] ACC stated that if this were to have any impact, it would be to increase detergency performance.

ACC stated that the proposed amendment to § 80.162(a)(3)(i)(B) was necessary because additive manufacturers must target a higher concentration of detergent-active components when producing additives for sale than the level specified in the additive's certification testing. ACC noted that otherwise, the variability inherent in the production process and in analytical measurements could result in a measured concentration of detergent-active components that is lower than the level reported in the additive's certification. ACC further stated that since EPA does not permit variability below the concentration of detergent-active components reported in the certification, additive manufacturers need the flexibility to produce products having a higher concentration of these components.

We believe that AAM's objections to the amendment to § 80.162(a)(3)(i)(B) are unfounded. AAM presented no data or scientific rationale to support its concerns. We agree with ACC's assertion that there is no reason to expect a decrease in FID/IVD control efficacy if the concentration of one detergent-active component is increased above the level present in the test fuel used during additive certification testing, while another detergent-active component is present at the same concentration in the certification test fuel. We are aware that an increase in the concentration of certain components of a detergent additive package (such as mineral-based carrier oils) may tend to increase the contribution of such additives to the formation of CCD. However, for the reasons noted previously, EPA continues to believe that there is insufficient basis to support the development of a combustion chamber deposit control requirement at this time. Therefore, we believe that there is insufficient justification to implement a cap on the concentration of the components in a DC additive package based on the potential that higher concentrations may contribute to the formation of CCD.

We agree with ACC's statement that additive manufactures must be allowed to increase the concentration of detergent-active components in additive production batches in order to comply with EPA's requirement that all detergent-active components must be present at least at the concentration present in the certification test fuel. Thus, today's action implements the proposed change to make it clear that additive manufactures have this flexibility.

B. Revisions to § 80.162(a)(3)(ii)

The current requirements in § 80.162(a)(3)(ii) state that:

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration, provided that the range of such variation is specified in the registration and that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

EPA's goal in establishing this requirement in its current form was to ensure that the effectiveness of deposit control additives is not adversely impacted by variability in the composition of non-detergent-active components.

Non-detergent-active additives include corrosion inhibitors, anti-oxidation additives, anti-static additives, and metal de-activators. When necessary, such additives are added separately to gasoline. Additive manufactures need to ensure the compatibility of their additives with the range of in-use additives during the development of a DC additive package (and as new additives are introduced into the market). When it is feasible to include the needed non-detergent-active additives in the detergent additive package, a batch of finished gasoline need be injected with additives only once. Limiting the number of separate additizations needed can result in a reduction in overall additive costs. DC additive manufacturers commonly switch the non-detergent-active components in their additive package depending on market conditions.

In its petition for review, CMA requested that § 80.162(a)(3)(ii) be revised by deleting: ''the range of such variation is specified in the registration and that.'' CMA stated that there is no need to report the range of variation in the identity or concentration of non-detergent-active components since such variation does not impact the efficacy of the deposit control additive package. CMA stated that restricting the additive manufacturer's flexibility to switch the non-detergent-active components of their DC additive package would increase manufacturing costs, and potentially cause supply problems.

In the NPRM/DFRM, we agreed with CMA that maximizing additive manufacturer flexibility in the choice of non-detergent-active components would reduce the burden of compliance on additive manufacturers and would not jeopardize the emissions benefits of the gasoline deposit control additive program. We also agreed that differences in the composition and concentration of non-detergent-additive components would have no impact on the efficacy of the deposit control additive package provided that such differences do not impact the concentration of detergent-active components in the package. Furthermore, we stated that there would continue to be adequate regulatory requirements to prevent such an occurrence, and that the proposed amendment would not impact the environmental benefits of the gasoline deposit control program.

In its comments on the NPRM, AAM objected to the proposed amendment to § 80.162(a)(3)(ii) based on similar concerns to those AAM expressed regarding the proposed revision to (§ 80.162(a)(3)(i)(B). Specifically, AAM stated that changes to non-detergent-active components in a detergent additive package could have an adverse impact on deposit control efficacy. In its comments on the NPRM, Chevron Oronite stated that all carrier oils used in detergent additive packages have an impact on deposit control efficacy and that EPA should not allow carrier oils to be treated as non-detergent-active components. Chevron Oronite stated that EPA should therefore not permit the switching of carrier oils under the same additive certification or a reduction in the concentration of carrier oils in additive production batches below the concentration used during certification testing. Chevron Oronite stated that it supported the proposed amendment as it would apply to non-detergent-active components.

After EPA's withdrawal of the proposed amendments to §§ 80.162(a)(3)(i)(B) and 80.162(a)(3)(ii) due to the receipt of adverse comments, ACC convened its Fuel Additive Task Group (which includes Chevron Oronite) to discuss how these adverse comments might be resolved. In a letter to EPA, ACC stated that EPA could

[4] EPA docket A–2001–15, docket item IV–G–01.

address the concern voiced in the comment from Chevron Oronite by issuing the clarifying interpretation that carrier oils may not be listed as non-detergent active unless the additive certifier has data to support the assertion that the carrier oil is not detergent-active.

We are aware of no data or other evidence to suggest that non-detergent-active additives present in a DC additive package (or added to gasoline separately) influence the package's deposit control efficacy. Hence we see no compelling reason to limit the flexibility of additive manufacturers to make changes in the composition or concentration to the non-detergent-active components of their DC additive packages. Existing safeguards in the regulatory requirements will ensure that variability in non-detergent-active components does not reduce the in-use concentration of detergent-active components compared to that in the certification test fuels. Therefore, we believe that the proposed amendment to § 80.162(a)(3)(ii) would not adversely impact deposit control efficacy or the emissions benefits of the gasoline deposit control program.

We agree with the suggestion from ACC that adding clarifying language to the regulatory text regarding when a carrier might be considered non-detergent-active would be useful in preventing potential misunderstandings during DC additive certification. When a DC additive package contains a separate carrier oil, it is typically a necessary component with respect to the package's deposit control efficacy. In fact, we are aware of no instance where such a carrier oil might reasonably be considered non-detergent-active. Therefore, today's action adds language to the proposed regulatory text to make it clear that all carrier oils present in the detergent certification test fuel will be considered as detergent active by EPA unless the additive manufacturer provides data to substantiate the carrier oil is non-detergent-active.

Solvents such as xylene are sometimes used to dilute a DC additive package to improve its cold-flow performance during the winter.[5] Both solvents and carrier oils may be composed of nothing more than a specific petroleum boiling fraction.[6] However, such solvents are easily differentiated from carrier oils based on their boiling characteristics. Carrier oils must have a high boiling range to provide the washing action for which they are intended, while cold-flow solvents must have a substantially lower boiling range in order to provide the intended improvement in cold-flow performance. Therefore, we believe that there is no potential for additive manufacturers to confuse the two when reporting the component parts of their DC additive package at the time of certification. A high boiling fraction oil will always be considered as a carrier oil by EPA, and as such be presumed to be detergent active unless the additive manufacturer provides data to substantiate that the oil is non-detergent active. EPA will scrutinize such data on a case-by-case basis.

Consistent with the above discussion, today's action amends § 80.162(a)(3)(ii) to read as follows:

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration provided that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

(A) Unless the additive manufacturer (or other certifying party) provides EPA with data to substantiate that a carrier oil does not act to enhance the detergent additive package's ability to control deposits, any carrier oil contained in the detergent additive package, whether petroleum-based or synthetic, must be treated as a detergent-active component in accordance with the additive compositional reporting requirements in § 80.162(a)(2). Such data should be sent by certified mail to the address specified in § 80.174(b).

IV. What Are the Economic and Environmental Impacts?

The revisions made by today's notice will reduce the burden of compliance with the gasoline deposit control additive program while not impacting the environmental benefits of the program.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Review

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as one 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.

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

B. Paperwork Reduction Act

This action does not impose a new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) previously approved the information collection requirements (ICR) of EPA's Gasoline Deposit Control Additive Program contained in 40 CFR Part 80 under the provisions of the Paperwork Reduction Act, and has assigned OMB control number 2060–0275 to these information collection requirements (EPA ICR No. 1655.04). Today's rule does not result in a change in the requirements contained in the existing ICR for EPA's Gasoline Deposit Control Additive Program. No new information collection requirements or increase in the information collection burden will result from the implementation of today's action.

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;

[5] In such cases the additive treatment rate is increased to ensure that the detergent-active components are present in the additized gasoline at least at the concentration established during certification testing.

[6] Synthetic carrier oils have come to replace mineral-based carrier oils in many DC additive packages. Synthetic carrier oils possess high boiling characteristics similar to those for mineral-based carrier oils.

complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

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

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

Today's rule simplifies the requirements for additive manufacturers under the gasoline deposit control program and does not impose any significant new requirements. The regulatory changes made by today's action will reduce the burden of compliance for all regulated parties. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities. Therefore, EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

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 of 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. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any State, local or tribal governments. Therefore, nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a Federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. The amendments contained in this final rule simplify the requirements under the gasoline deposit control program, and do not impose any significant new requirements. Therefore, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's action amends the reporting requirements for manufactures of deposit control additives regarding the allowed variability in the composition of additives certified under EPA's gasoline deposit program. These amendments do not impose any new requirements and will not result in any additional costs for Indian tribal governments. Thus,

Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health 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 we have 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 the Executive Order because it is not economically significant as defined by 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 revisions made by today's notice will reduce the burden of compliance with the gasoline deposit control additive program while not impacting the environmental benefits of the program.

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

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

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a (major rule(as defined by 5 U.S.C. 804(2). This rule will be effective November 14, 2005.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: November 3, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

Subpart G—Detergent Gasoline

■ 2. Section 80.162 is amended by revising paragraphs (a)(3)(i)(B) and (a)(3)(ii) to read as follows:

§ 80.162 Additive compositional data.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(B) Include a range of concentration for any detergent-active component such that, if the component were present in the detergent additive package at the lower bound of the reported range, the deposit control effectiveness of the additive package would be reduced as compared with the level of effectiveness demonstrated during certification testing. Subject to the foregoing constraint, a detergent additive product sold under a particular additive registration may contain a higher concentration of the detergent-active component(s) than the concentration(s) of such component(s) reported in the registration for the additive.

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration provided that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

(A) Unless the additive manufacturer (or other certifying party) provides EPA with data to substantiate that a carrier oil does not act to enhance the detergent additive package's ability to control deposits, any carrier oil contained in the detergent additive package, whether petroleum-based or synthetic, must be treated as a detergent-active component in accordance with the additive compositional reporting requirements in § 80.162(a)(2). Such data should be sent by certified mail to the address specified in § 80.174(b).

(B) [Reserved.]

* * * * *

[FR Doc. 05–22462 Filed 11–10–05; 8:45 am]

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Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005 (Nov. 8, 2005; 119 Stat. 2111)

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81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
***44**	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
*1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
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200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.