



# Federal Register

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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:** Thursday, September 22, 2005  
9:00 a.m.–Noon

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

**RESERVATIONS:** (202) 741-6008



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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 946

[Docket No. FV05-946-3 IFR]

#### Irish Potatoes Grown in Washington; Modification of Pack Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule modifies the pack requirements currently prescribed under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule relaxes the pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons to better meet buyer needs. Currently, only potatoes grading U.S. No. 1 or better, or potatoes failing to grade U.S. No. 1 only because of internal defects, may be shipped in cartons. The relaxation in pack requirements will help maximize producer returns.

**DATES:** Effective September 13, 2005; comments received by November 14, 2005 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and

will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler

is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule relaxes pack requirements by allowing handlers to ship U.S. No. 2 grade potatoes in cartons provided the cartons are permanently and conspicuously marked as to grade. This change will enable handlers to ship U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns. Currently, only potatoes grading U.S. No. 1 grade or better, or potatoes failing to grade U.S. No. 1 only because of internal defects, may be shipped in cartons.

Section 946.52 of the order authorizes the establishment of grade, size, quality, or maturity regulations for any variety or varieties of potatoes grown in the production area. Section 946.52 also authorizes the regulation of the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both (70 FR 41129; July 18, 2005). Section 946.51 further authorizes the modification, suspension, or termination of regulations issued under § 946.52. Section 946.60 provides that whenever potatoes are regulated pursuant to § 946.52 such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Section 946.336 of the order's administrative rules prescribes the quality, size, maturity, cleanness, pack, and inspection requirements for fresh market Washington potatoes. Section 946.336(c) prescribes the pack requirements for domestic and export shipments of potatoes. Grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR part 51.1540-51.1566).

At a telephone meeting on July 26, 2005, the Committee unanimously recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons that are permanently and conspicuously

marked as to grade. Current requirements provide that all potatoes packed in cartons shall be U.S. No. 1 grade or better, except that potatoes failing to grade U.S. No. 1 only because of internal defects may be shipped in cartons. Lots of such potatoes cannot contain more than 10 percent damage by any internal defect or combination of internal defects, and not more than 5 percent serious damage by any internal defect or combination of internal defects.

Customers have been requesting U.S. No. 2 grade potatoes in cartons because of difficulties encountered in handling the currently used 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers now purchase potatoes from other areas where U.S. No. 2 potatoes are packed in cartons. The Committee would like to respond to these changing market conditions so that handlers remain competitive with other areas and not lose sales.

The Committee also recognized the need to distinguish these U.S. No. 2 grade potatoes in cartons from the industry's traditional premium packs of potatoes that grade U.S. No. 1 and potatoes that fail to grade U.S. No. 1 only because of internal defects. Without such distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on these premium packs. Therefore, the Committee included in their recommendation that cartons containing such potatoes be permanently and conspicuously marked to grade.

#### Initial Regulatory Flexibility Analysis

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

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

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 51 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 272 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2003–2004 marketing year 10,652,495 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$7.45 per hundredweight, the Committee estimates that 48 handlers, or about 94 percent, had annual receipts of less than \$6,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for the 2003 marketing year (the most recent period that final statistics are available) was \$5.25 per hundredweight. The average annual producer revenue for each of the 272 Washington potato producers is therefore calculated to be approximately \$205,609.

In view of the foregoing, the majority of the Washington potato producers and handlers may be classified as small entities.

This rule relaxes the pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in cartons provided the cartons are permanently and conspicuously marked as to grade. This would enable handlers to ship U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The authority for the pack and marking or labeling requirements is provided in § 946.52 of the order (70 FR 41129; July 18, 2005). Section 946.336(c) of the order's administrative rules prescribes the pack requirements for domestic and export shipments of potatoes.

The Committee believes that the recommendation should increase the sale of U.S. No. 2 grade potatoes. This action is expected to further increase shipments of U.S. No. 2 potatoes to the food service industry, and help the Washington potato industry benefit from the increased growth in the food service industry. These changes might require the purchase of new equipment to mark the cartons. However, these costs will be minimal and would be offset by the benefits of being able to ship U.S. No. 2 grade potatoes in

cartons. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

The Committee discussed several alternatives to this recommendation, including not allowing U.S. No. 2 grade potatoes to be shipped in cartons. However, the Committee believed that it was important to be able to respond to changing market conditions and meet customer needs.

The Committee considered restricting the size of carton, types of cartons as well as the size of the marking and location on the carton. However, the Committee decided not to specify size or type of container or size and location of the markings to allow handlers more flexibility in marketing U.S. No. 2 grade potatoes in cartons provided the cartons were marked permanently and conspicuously as to grade.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Further, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations on all issues. All entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a relaxation to the pack requirements currently prescribed under the Washington potato marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will

tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exist for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective as soon as practicable because the Washington potato shipping season began in July; (2) the Committee unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input; (3) handlers are aware of this action and want to take advantage of this relaxation as soon as possible; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 946**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

**PART 946—IRISH POTATOES GROWN IN WASHINGTON**

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 946.336, paragraph (c)(1) is revised to read as follows:

**§ 946.336 Handling regulation.**

\* \* \* \* \*

(c) *Pack and marking:*

(1) *Domestic:* Potatoes packed in cartons shall be either:

(i) U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped without regard to this requirement provided the lot contains no more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(ii) U.S. No. 2 grade, provided the cartons are permanently and conspicuously marked as to grade. This marking requirement does not apply to cartons containing potatoes meeting the requirements of (c)(1)(i).

\* \* \* \* \*

Dated: September 6, 2005.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–17964 Filed 9–9–05; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NE–17–AD; Amendment 39–14265; AD 2005–01–15R1]**

**RIN 2120–AA64**

**Airworthiness Directives; Rolls-Royce plc RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is revising an existing airworthiness directive (AD) for Rolls-Royce plc (RR) RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 series turbofan engines with certain part number (P/N) low pressure compressor (LPC) fan blades installed. That AD currently requires initial and repetitive ultrasonic inspections of the fan blade dovetail roots and defines a specific terminating action to the repetitive blade inspection requirements. This AD requires the same actions but clarifies the terminating action. We are issuing this AD to prevent multiple LPC fan blade failures due to cracks, which could result in uncontained engine failure and possible damage to the airplane.

**DATES:** This AD becomes effective October 17, 2005. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of January 28, 2005 (70 FR 2336, January 13, 2005).

**ADDRESSES:** Contact Rolls-Royce plc, P.O. Box 31, Derby DE24 6BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for the service information identified in this AD.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace

Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On January 3, 2005, we issued AD 2005–01–15, Amendment 39–13940 (70 FR 2336, January 13, 2005). That AD superseded AD 2002–11–08, Amendment 39–12769 (67 FR 38852 June 6, 2002). AD 2005–01–15 requires initial and repetitive ultrasonic inspections of the fan blade dovetail roots, and defines a specific terminating action to the repetitive blade inspection requirements. That AD was the result of a report of a cracked fan blade found before the blade reached the initial inspection threshold of AD 2002–11–08. That AD also reduced the repetitive inspection compliance time due to potential breakdown of blade coating and lubrication on certain blades. Those conditions, if not corrected, could result in uncontained engine failure and possible damage to the airplane.

**Actions Since We Issued AD 2005–01–15**

Since we issued AD 2005–01–15, we received a comment from an operator requesting that we clarify the terminating action in that AD. As that AD is currently written, you must install LPC fan blades in complete sets to comply with the terminating action. Our intent is that all blades must be replaced with blades that meet the replacement criteria to qualify as terminating action, but not necessarily replaced as a complete set. In response to the comment, we published a proposed AD in the **Federal Register** on March 9, 2005 (70 FR 11585). That action proposed to require initial and repetitive ultrasonic inspections of the fan blade dovetail roots, and to clarify a specific terminating action to the repetitive blade inspection requirements.

**Examining the AD Docket**

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

**Comments**

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

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**Costs of Compliance**

There are about 350 RR RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 series turbofan engines of the affected design in the worldwide fleet. We estimate that 90 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it would take about 8 work hours per engine to perform the inspections, and about 260 work hours per engine to perform the terminating action. The average labor rate is \$65 per work hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$1,567,800.

**Regulatory Findings**

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2001-NE-17-AD" in your request.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Amendment 39-13940 (70 FR 2336, January 13, 2005), and by adding the following new airworthiness directive, Amendment 39-14265:

**2005-01-15R1 Rolls-Royce plc:**  
Amendment 39-14265. Docket No. 2001-NE-17-AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective October 17, 2005.

**Affected ADs**

(b) This AD revises AD 2005-01-15, Amendment 39-13940.

**Applicability:** (c) This AD applies to Rolls-Royce plc (RR) RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 series turbofan engines with low pressure compressor (LPC) fan blades, part numbers (P/Ns) FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175, installed. These engines are installed on, but not limited to, Boeing Company 777 series airplanes.

**Unsafe Condition**

(d) This AD revision results from a request by an operator to clarify the terminating action in AD 2005-01-15. We are issuing this AD to prevent multiple LPC fan blade failures due to cracks, which could result in uncontained engine failure and possible damage to 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.

(f) Ultrasonic-inspect and disposition the dovetail roots of LPC fan blades, P/Ns FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175, that are removed from the engine, using 3.A.(1) through 3.A.(5) or, for blades that are not removed from the engine, using 3.B.(1) through 3.B.(5) of the Accomplishment Instructions of RR Alert Service Bulletin (ASB) No. RB.211-72-AD344, Revision 7, dated March 12, 2004, as follows:

(1) For blades P/Ns FK30838, FK30840, and FK30842, that have not been relubricated during any interval exceeding 600 cycles-since-new (CSN) or 600 cycles-since-rework (CSR) using either RR ASB No. RB.211-72-AD344 or Service Bulletin (SB) No. RB.211-72-D347, inspect as specified in paragraph (f) of this AD and within the compliance times specified in the following Table 1:

TABLE 1.—COMPLIANCE TIMES FOR BLADES P/Ns FK30838, FK30840, AND FK30842

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection (cycles-since-last-inspection) (CSLI)
(i) -884B, -892 .....	-300	(A) 660 and 632.5 .....	600	80
		(B) 580 .....	2,000	600
(ii) -884, 884, -892, -892B, and -895 .....	-200	(A) 632.5 and 648 .....	1,200	100
		(B) 656 .....	600	80
		(C) 555 .....	2,000	600
(iii) -875 .....	-200	535 .....	2,000	600
(iv) -877 .....	-200	545 .....	2,000	600

(2) For blades P/Ns FK30838, FK30840, and FK30842, that have been relubricated at intervals not exceeding 600 CSN or 600 CSR

using either RR ASB No. RB.211-72-AD344 or SB No. RB.211-72-D347, inspect as specified in paragraph (f) of this AD and

within the compliance times specified in the following Table 2:

TABLE 2.—COMPLIANCE TIMES FOR BLADES P/Ns FK30838, FK30840, AND FK30842

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection CSLI
(i) -884B, 892 .....	-300	(A) 660 and 632.5 .....	600	80

TABLE 2.—COMPLIANCE TIMES FOR BLADES P/Ns FK30838, FK30840, AND FK30842—Continued

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection CSLI
(ii) -884, -892, -892B, and -895	-200	(B) 580	2,400	600
		(A) 632.5 and 648	1,200	100
		(B) 656	600	80
		(C) 555	2,400	600
(iii) -875	-200	535	2,400	600
(iv) -877	-200	545	2,400	600

(3) For blades P/Ns FW12960, FW12961, FW12962, and FW13175, either new or reworked to that configuration at greater than 600 CSN or since previous rework, or that

have not been relubricated during any interval exceeding 600 CSN or 600 CSR using either RR ASB No. RB.211-72-AD344 or SB No. RB.211-72-D347 requirements, inspect

as specified in paragraph (f) of this AD and within the compliance times specified in the following

TABLE 3.—COMPLIANCE TIMES FOR BLADES P/Ns FW12960, FW12961, FW12962, AND FW13175

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection CSLI
(i) -884B, -892	-300	(A) 660 and 632.5	600	100
		(B) 580	2,000	600
(ii) -884B, -892, -892B, and -895	-200	(A) 632.5 and 648	1,200	125
		(B) 656	600	100
		(C) 555	2,000	600
		535	2,000	600
(iii) -877	-200	545	2,000	600

(4) For blades P/Ns FW12960, FW12961, FW12962, and FW13175, either new or reworked to that configuration at fewer than 600 CSN or since previous rework, and that

have been relubricated at intervals not exceeding 600 CSN using either RR ASB No. RB.211-72-AD344 or SB No. RB.211-72-D347, inspect as specified in paragraph (f) of

this AD and within the compliance times specified in the following Table 4:

TABLE 4.—COMPLIANCE TIMES FOR BLADES P/Ns FW12960, FW12961, FW12962, AND FW13175

Engine series	Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	Initial inspection CSN	Repetitive inspection CSLI
(i) -884B, -892	-300	(A) 660 and 632.5	600	100
		(B) 580	2,400	1,200
(ii) -884, -892, -892B, and -895	-200	(A) 632.5 and 648	2,400	125
		(B) 656	600	100
		(C) 555	2,400	1,200
		535	2,400	1,200
(iv) -877	-200	545	2,400	600

(g) When engines containing blades P/Ns FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, and FW13175 are moved from one gross weight category to another, the inspection schedule that is applicable to the higher gross weight category must be used.

**Terminating Action**

(h) As terminating action to the repetitive inspection requirements of this AD, at the next shop visit when the LPC fan blades are removed for repair or overhaul, but no later than December 31, 2009:

(1) Replace LPC fan blades P/Ns FK30838, FK30840, FK30842, FW12960, FW12961, FW12962, or FW13175, with serviceable LPC fan blades.

(2) For the purposes of this AD, serviceable LPC fan blades are blades that feature additional blade root processing

requirements found in RR SB No. RB.211-72-D672, dated February 1, 2002; or are LPC fan blades that feature a full form root profile. Information on full form root profile blades can be found in RR SB No. RB.211-72-D390, RR SB No. RB.211-72-E044, and RR SB No. RB.211-72-E382.

**Previous Credit**

(i) Previous credit is allowed for initial inspections of fan blades that were done using RR ASB No. RB.211-72-AD344, Revision 4, dated March 15, 2002, Revision 5, dated June 20, 2003, Revision 6, dated February 27, 2004, or Revision 7, dated March 12, 2004, before the effective date of this AD.

**Alternative Methods of Compliance**

(j) The Manager, Engine Certification Office, has the authority to approve

alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Material Incorporated by Reference**

(k) You must use the Rolls-Royce plc service information specified in Table 5 of this AD to perform the blade inspections and replacements required by this AD. The Director of the **Federal Register** approved the incorporation by reference of the documents listed in Table 5 of this AD as of January 28, 2005 (70 FR 2336, January 13, 2005). You can get a copy from Rolls-Royce plc, P.O. Box 31, Derby DE24 6BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936. You may review copies at the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-NE-17-AD, 12 New England Executive Park, Burlington, MA; or at the National Archives

and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go

to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Table 5 follows:

TABLE 5.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
RB.211-72-AD344 ..... Total Pages: 11	All .....	7 .....	March 12, 2004.
RB.211-72-AD344, Appendices 1 through 5 ..... Total Pages: 18	All .....	7 .....	March 12, 2004.
RB.211-72-D672 ..... Total Pages: 24	All .....	Original .....	February 1, 2002.

**Related Information**

(l) Civil Aviation Authority (CAA) airworthiness directive G-2004-0008, dated April 29, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on September 6, 2005.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*  
[FR Doc. 05-17976 Filed 9-9-05; 8:45 am]

**BILLING CODE** 4910-13-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 1**

[Docket No. 2005D-0356]

**Guidance for Industry: Questions and Answers Regarding the Final Rule on Establishment and Maintenance of Records; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability of guidance.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled “Questions and Answers Regarding Establishment and Maintenance of Records.” The guidance responds to various questions raised about the recordkeeping provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency’s implementing regulation, which requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance entitled “Questions and Answers Regarding Establishment and Maintenance of Records” to Denise Beavers (see **FOR FURTHER INFORMATION CONTACT**). Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the *Federal Register* of December 9, 2004 (69 FR 71562), FDA issued a final rule to implement section 306 of the Bioterrorism Act (21 U.S.C. 350c). The regulation requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food. Persons subject to the regulation are required to be in compliance by December 9, 2005, June 9, 2006, or December 11, 2006, depending on the size of the business.

The guidance for industry entitled “Questions and Answers Regarding Establishment and Maintenance of Records” responds to questions about the final rule on records. It is intended to help industry better understand and comply with the regulation in 21 CFR part 1, subpart J. FDA is issuing this guidance as a level 1 guidance. The guidance represents the agency’s current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the

public. Consistent with FDA’s good guidance practices regulation § 10.115(g)(2) (21 CFR 10.115(g)(2)), the agency will accept comments, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, the final rule requires that covered persons begin to establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food by December 9, 2005, June 9, 2006, or December 11, 2006, depending on the size of the business. Clarifying the provisions of the final rule will facilitate prompt compliance with these requirements and ensure complete implementation of the final rule.

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

**II. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding 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 and the guidance may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**III. Electronic Access**

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

Dated: September 1, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05-18039 Filed 9-7-05; 3:12 pm]

**BILLING CODE 4160-01-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 228**

[FRL-7967-7]

**Ocean Dumping; LA-3 Ocean Dredged Material Disposal Site Designation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today designates LA-3 as a permanent ocean dredged material disposal site (ODMDS) located offshore of Newport Beach, California, managed at a maximum annual dredged material disposal quantity of 2,500,000 cubic yards (yd<sup>3</sup>) (1,911,000 cubic meters [m<sup>3</sup>]), and adjusts the management of the permanently-designated LA-2 ODMDS at an increased maximum annual dredged material disposal quantity of 1,000,000 yd<sup>3</sup> (765,000 m<sup>3</sup>) for the ocean disposal of clean dredged material from the Los Angeles County and Orange County regions. The availability of suitable ocean disposal sites to support ongoing maintenance and capital improvement projects is essential for the continued use and economic growth of the vital commercial and recreational areas in the region. Dredged material will not be allowed to be disposed of in the ocean

unless the material meets strict environmental criteria established by the EPA and U.S. Army Corps of Engineers (USACE).

The action would shift the center of the permanently-designated LA-3 site approximately 1.3 nautical miles (nmi) (2.4 kilometers [km]) to the southeast of the interim LA-3 site, and encompass a region that is already disturbed by dredged material. The permanent site also would be located on a flat, depositional plain, and away from the submarine canyons, that will be more amenable to surveillance and monitoring activities. The LA-2 site is a permanently designated ODMDS that has been historically managed at an average annual disposal quantity of 200,000 yd<sup>3</sup> (153,000 m<sup>3</sup>) for the disposal of material dredged primarily from the Los Angeles/Long Beach Harbor complex. The action will allow an increased volume of dredged material to be disposed annually at this site. The annual disposal quantity has occasionally exceeded the historical annual average due to capital projects from both the ports of Los Angeles and Long Beach. Thus, the new maximum volume designation would accommodate the projected average annual volume requirements as well as provide for substantial annual volume fluctuations.

**DATES:** This final regulation is effective on October 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Allan Ota, Dredging and Sediment Management Team, U.S. Environmental Protection Agency, Region IX (WTR-8), 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972-3476 or FAX: (415) 947-3537 or e-mail: [ota.allan@epa.gov](mailto:ota.allan@epa.gov).

**SUPPLEMENTARY INFORMATION:** The supporting document for this site designation is the Final Environmental Impact Statement for the Site Designation of the LA-3 Ocean Dredged Material Disposal Site off Newport Bay, Orange County, California. This document is available for public inspection at the following locations:

1. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California 94105.

2. EPA Public Information Reference Unit, Room 2904, 401 M Street, SW., Washington, DC 20460.

3. U.S. EPA, Southern California Field Office, 600 Wilshire Boulevard, Suite 1460, Los Angeles, CA 90017.

4. Lloyd Taber-Marina del Rey Library, 4533 Admiralty Way, Marina del Rey, CA 90292.

5. Long Beach Public Library, 101 Pacific Avenue, Long Beach, CA 90822.

6. Los Angeles Public Library, Central Library, 630 West 5th Street, Los Angeles, CA 90071.

7. Los Angeles Public Library, San Pedro Regional Branch Library, 931 South Gaffey Street, San Pedro, CA 90731.

8. Newport Beach Public Library, Balboa Branch, 100 East Balboa Boulevard, Balboa, CA 92661.

9. Newport Beach Public Library, Central Library, 1000 Avocado Avenue, Newport Beach, CA 92660.

10. Newport Beach Public Library, Corona del Mar Branch, 420 Marigold Avenue, Corona del Mar, CA 92625.

11. Newport Beach Public Library, Mariners Branch, 2005 Dover Drive, Newport Beach, CA 92660.

12. U.S. EPA Web site: <http://www.epa.gov/region9>.

13. U.S. Army Corps of Engineers' Web site: <http://www.spl.usace.army.mil>.

**A. Potentially Affected Entities**

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the LA-3 and LA-2 ODMDS, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Rule would be primarily of relevance to parties in the Los Angeles and Orange County areas seeking permits from the USACE to transport dredged material for the purpose of disposal into ocean waters at the LA-3 and LA-2 ODMDS, as well as the USACE itself (when proposing to dispose of dredged material at the LA-3 and LA-2 ODMDS). Potentially affected categories and entities seeking to use the LA-3 and LA-2 ODMDS and thus subject to this Rule include:

Category	Examples of potentially affected entities
Industry and General Public .....	Ports. Marinas and Harbors. Shipyards and Marine Repair Facilities. Berth owners.
State, local and tribal governments .....	Governments owning and/or responsible for ports, harbors, and/or berths. Government agencies requiring disposal of dredged material associated with public works projects.
Federal Government .....	U.S. Army Corps of Engineers Civil Works and O & M projects.

Category	Examples of potentially affected entities
	Other Federal agencies, including the Department of Defense.

This table lists the types of entities that EPA is now aware potentially could be affected. EPA notes, however, that nothing in this Rule alters in any way, the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization may be potentially affected by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the LA-3 and/or LA-2 ODMDS. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## B. Background

Ocean disposal of dredged materials is regulated under Title I of the Marine Protection, Research and Sanctuaries Act (MPRSA; 33 U.S.C. 1401 *et seq.*). The EPA and the USACE share responsibility for the management of ocean disposal of dredged material. Under section 102 of MPRSA, EPA has the responsibility for designating an acceptable location for the ODMDS. With concurrence from EPA, the USACE issues permits under MPRSA Section 103 for ocean disposal of dredged material deemed suitable according to EPA criteria in MPRSA Section 102 and EPA regulations in Title 40 of the Code of Federal Regulations part 227 (40 CFR part 227).

It is EPA's policy to publish an EIS for all ODMDS designations (63 FR 58045, October 1998). A site designation EIS is a formal evaluation of alternative sites which examines the potential environmental impacts associated with disposal of dredged material at various locations. The EIS must first demonstrate the need for the ODMDS designation action (40 CFR 6.203(a) and 40 CFR 1502.13) by describing available or potential aquatic and non-aquatic (*i.e.*, land-based) alternatives and the consequences of not designating a site—the No Action Alternative. Once the need for an ocean disposal site is established, potential sites are screened for feasibility through the Zone of Siting Feasibility (ZSF) process. Remaining alternative sites are evaluated using EPA's ocean disposal criteria at 40 CFR part 228 and compared in the EIS. Of the sites which satisfy these criteria, the

site which best complies with them is selected as the preferred alternative for formal designation through rulemaking published in the **Federal Register** (FR).

Formal designation of an ODMDS in the **Federal Register** does not constitute approval of dredged material for ocean disposal. Designation of an ODMDS provides an ocean disposal alternative for consideration in the review of each proposed dredging project. Ocean disposal is only allowed when EPA and USACE determine that the proposed activity is environmentally acceptable according to the criteria at 40 CFR part 227. Decisions to allow ocean disposal are made on a case-by-case basis through the MPRSA Section 103 permitting process or its equivalent process for USACE's Civil Works projects. Material proposed for disposal at a designated ODMDS must conform to EPA's permitting criteria for acceptable quality (40 CFR parts 225 and 227), as determined from physical, chemical, and bioassay/bioaccumulation testing (EPA and USACE 1991). Only clean non-toxic dredged material is acceptable for ocean disposal.

The interim LA-3 disposal site is located on the continental slope of Newport Submarine Canyon at a depth of about 1,475 feet (ft) (450 meters [m]), approximately 4.3 nmi (8 km) southwest of the entrance of Newport Harbor. This region is characterized by a relatively smooth continental slope (approximately two-degree slope) incised by a complicated pattern of meandering broad submarine canyons that can be up to 98 ft (30 m) deep and 656–2,625 ft (200–800 m) wide. The circular interim site boundary is centered at 33°31'42" N and 117°54'48" W, with a 3,000 ft (915 m) radius.

The interim LA-3 site has been used for disposing sediment dredged from harbors and flood channels within the County of Orange since 1976. Prior to 1992, LA-3 was permitted by the USACE as a designated ocean disposal site for specific projects only. In 1992, the EPA approved LA-3 as an interim disposal site; this interim status expired January 1, 1997 (Water Resources Development Act [WRDA] 1992). The expiration date was extended to January 1, 2000, through the 1996 WRDA (1996). In 1999, this interim status was extended for another three years and expired December 31, 2002. The action designates LA-3 as a permanent

ODMDS for disposal of dredged materials generated from ongoing dredging activities, such as dredging to preserve the wetland habitat within the Upper Newport Bay or to maintain navigation channels at Newport and Dana Point Harbors.

The action also shifts the center of the LA-3 site approximately 1.3 nmi (2.4 km) to the southeast of the interim LA-3 site. The circular boundary of the permanently designated LA-3 site would be centered at 33°31'00" N and 117°53'30" W and would have a 3,000 ft (915 m) radius. The depth of the center of the site would be approximately 1,600 ft (490 m). At this location the site boundary would be farther away from the submarine canyons that run through the interim site, thus simplifying surveillance and monitoring activities.

The LA-2 ODMDS was designated as a permanent disposal site on February 15, 1991. The LA-2 site is located on the outer continental shelf, margin, and upper southern wall of the San Pedro Sea Valley at depths from approximately 360–1,115 ft (110 to 340 m), about 5.9 nmi (11 km) south-southwest of the entrance to Los Angeles Harbor. The relatively flat continental shelf occurs in water depths to about 410 ft (125 m) with a regional slope of 0.8 degree. Then the slope becomes steep at about 7 degrees seaward to the shelf break. The southern wall of the San Pedro Sea Valley drops away with slopes steeper than 9 degrees. The site boundary is centered at 33°37'6" N and 118°17'24" W with a radius of 3,000 ft (915 m).

The LA-2 ODMDS does not have an annual disposal volume limit. However, the site designation EIS evaluated potential impacts based on a historical annual average of 200,000 yd<sup>3</sup> (153,000 m<sup>3</sup>). Since 1991, the annual disposal quantity occasionally has exceeded the pre-designation historical annual average because of capital projects from both the ports of Los Angeles and Long Beach.

The need for ongoing ocean disposal capacity is based on historical dredging volumes from the local port districts, marinas and harbors, and federal navigational channels, as well as on estimates of future average annual dredging. An overall average of approximately 390,000 yd<sup>3</sup> (298,000 m<sup>3</sup>) per year of dredged material requiring ocean disposal is expected to be

generated in the area. The purpose of the action is to ensure that adequate, environmentally-acceptable ocean disposal site capacity, in conjunction with other management options including upland disposal and beneficial reuse, is available for suitable dredged material generated in the greater Los Angeles County-Orange County area.

EPA and USACE encourage the use of dredged material for beach replenishment in areas degraded by erosion. The grain size distribution of dredged material must be compatible with the receiving beach, and biological and water quality impacts must be considered prior to permitting of beach disposal. EPA and USACE evaluate the selection of appropriate disposal methods on a case-by-case basis for each permit. Additionally, opportunities arise periodically to use dredged material for marine landfilling projects, also referred to as the creation of "fastlands." When the need arises, the use of dredged material for the creation of fastlands is considered a viable alternative to ocean disposal. Other potential beneficial uses for dredged material include construction fill, use as cap material in aquatic remediation projects, wetland creation, wetland restoration, landfill daily cover, and recycling into commercial products such as construction aggregate, ceramic tiles, or other building materials. Each of these disposal management options is evaluated when permits are issued for individual dredging projects.

A Zone of Siting Feasibility (ZSF) analysis estimates that after consideration of upland disposal and other beneficial uses, an average of approximately 390,000 yd<sup>3</sup> (298,000 m<sup>3</sup>) per year of dredged material will require ocean disposal. This material would be proposed for ocean disposal by project proponents because it is not of an appropriate physical quality (e.g., it is predominantly fine-grained material) for reuse or because a reuse opportunity cannot be found that coincides with the timing of the dredging projects.

The LA-2 ODMDS is approximately 5.9 nmi (11 km) offshore from the entrance to the Port of Los Angeles and approximately 8.4 nmi (15.5 km) from the entrance to the Port of Long Beach. The majority of suitable dredged material from USACE and port dredging projects in the Los Angeles County area that could not be beneficially reused has traditionally been disposed of at this site. When EPA originally designated LA-2 as a permanent disposal site in 1991, it evaluated the past history of disposal at the site up to that time and determined that significant adverse

environmental impacts were unlikely to occur if similar levels of disposal continued there in the future.

Most dredging projects from the Orange County area have not used the LA-2 site because of the extra costs and increased environmental impacts (such as increased air emissions) associated with transporting dredged material the longer distance to this site. Instead, projects traditionally have used the LA-3 interim site, located approximately 4.3 nmi (8 km) offshore from Newport Bay. The LA-3 interim disposal site was originally scheduled to close down on January 1, 1997, but the interim designation was extended by Congress until January 1, 2000 to allow a major Newport Bay dredging project to be completed (the approximately 1,000,000 yd<sup>3</sup> [765,000 m<sup>3</sup>] project to restore depth to sediment basins located in Upper Newport Bay). LA-3 was the only interim site in the nation specifically extended in this manner. Most recently, via the WRDA of 1999, Congress extended the status of LA-3 as an interim ODMDS for another three years (until December 31, 2002) to allow time for site designation studies and completion of the site designation EIS.

The action provides for adequate, environmentally-acceptable ocean disposal site capacity for suitable dredged material generated in the greater Los Angeles County-Orange County area by permanently designating the LA-3 ODMDS.

#### C. Disposal Volume Limit

The action is final designation of the LA-3 ODMDS managed at a maximum annual dredged material disposal quantity of 2,500,000 yd<sup>3</sup> (1,911,000 m<sup>3</sup>) and the management of LA-2 at an increased maximum annual dredged material disposal quantity of 1,000,000 yd<sup>3</sup> (765,000 m<sup>3</sup>) for the ocean disposal of dredged material from the Los Angeles and Orange County region. The need for ongoing ocean disposal capacity is based on historical dredging volumes from the local port districts, marinas and harbors, and federal navigational channels, as well as estimates of future average annual dredging.

#### D. Site Management and Monitoring Plan

Verification that significant impacts do not occur outside of the disposal site boundaries will be demonstrated through implementation of the Site Management and Monitoring Plan (SMMP) developed as part of the action. The main purpose of the SMMP is to provide a structured framework for resource agencies to ensure that dredged

material disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities (section 103(a) of the MPRSA). Three main objectives for management of both the LA-2 and LA-3 ODMDSs are: (1) Protection of the marine environment; (2) beneficial use of dredged material whenever practical; and (3) documentation of disposal activities at the ODMDS.

The EPA and USACE Los Angeles District personnel will achieve these objectives by jointly administering the following activities: (1) Regulation and administration of ocean disposal permits; (2) development and maintenance of a site monitoring program; (3) evaluation of permit compliance and monitoring results; and (4) maintenance of dredged material testing and site monitoring records to insure compliance with annual disposal volume targets and to facilitate future revisions to the SMMP.

The SMMP includes periodic physical monitoring to confirm that the material that is deposited is landing where it is supposed to land, as well as chemical monitoring to confirm that the sediment chemistry conforms to the pre-disposal testing requirements. Other activities implemented through the SMMP to achieve these objectives include: (1) Regulating quantities and types of material to be disposed of, and the time, rates, and methods of disposal; and (2) recommending changes for site use, disposal amounts, or designation for a limited time based on periodic evaluation of site monitoring results.

#### E. Ocean Dumping Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)).

##### *General Selection Criteria*

1. The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

Dredged material disposal activities have occurred at the LA-2 and LA-3 sites since the late 1970s. Historical disposal at the interim LA-3 site has not interfered with commercial or recreational navigation, commercial fishing, or sportfishing activities. Disposal at the LA-2 site, while located

within the U.S. Coast Guard Traffic Separation Scheme, has not interfered with these activities. The continued use of these sites would not change these conditions.

2. Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

The LA-2 and LA-3 sites are sufficiently removed from shore and limited fishery resources to allow water quality perturbations caused by dispersion of disposal material to be reduced to ambient conditions before reaching environmentally sensitive areas.

3. If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

Evaluation of the LA-2 and LA-3 sites indicates that they presently do and would continue to comply with these criteria. Additionally, compliance will continue to be evaluated through implementation of the Site Monitoring and Management Plan (SMMP).

4. The sizes of the ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

The LA-2 and LA-3 disposal sites are circular areas with a 3,000 ft (915 m) radius. The size of the sites has been determined by computer modeling to limit environmental impacts to the surrounding area and facilitate surveillance and monitoring operations. The designation of the size, configuration, and location of sites was determined as part of the evaluation study.

5. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and

other such sites that have been historically used.

The LA-3 site is located beyond the continental shelf, near a canyon on the continental slope, in an area that has been used historically for the disposal of dredged material. LA-3 is the only site in the vicinity that fully meets the above criteria. The LA-2 site, which has been permanently designated and has been used for the ocean disposal of dredged material since 1977, is located near the edge of the continental shelf at the 600 ft (183 m) contour.

#### *Specific Selection Criteria*

1. Geographical position, depth of water, bottom topography, and distance from the coast.

Centered at 33°31'00" N, 117°53'30" W, the LA-3 site bottom topography is gently sloping from approximately 1,500 to 1,675 ft (460 to 510 m). Situated near the slope of a submarine canyon, the site center is approximately 4.5 nmi (8.5 km) from the mouth of Newport Harbor. The LA-2 site is at the top edge of the continental slope in approximately 360 ft to 1,115 ft (110 to 340 m) of water. Centered at 33°37'06" N and 118°17'24" W, the LA-2 site is located just south of the San Pedro Valley submarine canyon, approximately 5.9 nmi (11 km) from the entrance to Los Angeles Harbor.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

The LA-2 and LA-3 sites are located in areas that are utilized for feeding and breeding of resident species. The LA-3 site is located in the gray whale migration route area, while the LA-2 site is located near the migration route. The California gray whale population was severely reduced in the 1800s and 1900s due to international whaling. However, protection from commercial whaling initiated in the 1940s has allowed the population to recover. There is no indication that disposal activities at LA-2 or LA-3 have adversely affected the gray whale. There are no known special breeding or nursery areas in the vicinity of the two disposal sites.

3. Location in relation to beaches and other amenity areas.

The LA-3 site boundary is located over 3.5 nmi (6.5 km) offshore of the nearest coast in the Newport Beach and Harbor area. The LA-2 site boundary is located over 4.6 nmi (8.5 km) offshore from the nearest coast in the Palos Verdes area. Other beach areas are more distant. No adverse impacts from dredged material disposal operations are expected on these amenity areas.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packaging the waste, if any.

Dredged material to be disposed of will be predominantly clays and silts primarily originating from the Los Angeles/Long Beach Harbor area and from Newport Bay and Harbor. Average annual disposal volumes at LA-3 range from 0 to approximately 337,000 yd<sup>3</sup> (0 to 258,000 m<sup>3</sup>). Average annual disposal volumes at LA-2 range from 68,000 yd<sup>3</sup> to approximately 405,000 yd<sup>3</sup> (52,000 to 310,000 m<sup>3</sup>).

Dredged material is expected to be released from split hull barges. No dumping of toxic materials or industrial or municipal waste would be allowed. Dredged material proposed for ocean disposal is subject to strict testing requirements established by the EPA and USACE, and only clean (non-toxic) dredged materials are allowed to be disposed at the LA-3 and LA-2 sites.

5. Feasibility of surveillance and monitoring.

The EPA (and USACE for federal projects in consultation with EPA) is responsible for site and compliance monitoring. USCG is responsible for vessel traffic-related monitoring. Monitoring the disposal sites is feasible but somewhat complicated by topography. At LA-3, this complication is reduced by relocation of the permanent LA-3 site away from submarine canyons.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Currents and vertical mixing will disperse unconsolidated fine grained dredged sediments in the upper water column in the vicinity of ODMDS boundaries. Prevailing currents are primarily parallel to shore and flow along constant depth contours. Situated near the slope of a submarine canyon, the LA-3 area would be expected to receive sedimentation from erosion and nearshore transport into the canyon. At LA-2, some sediment transport offshore occurs due to slumping. Overall, the seabed at both sites are considered to be non-dispersive, and sediments at both sites are expected to settle and remain offshore, with no impact expected on shore areas.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).

Localized physical impacts have occurred to sediments and benthic biota within the disposal sites due to past disposal operations. However, these activities have not resulted in long-term significant adverse impacts on the local

environment. No interactions with other discharges are anticipated due to the distances from the discharge points.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.

Continued use of the LA-2 and LA-3 sites would result in minor interferences with commercial shipping and fishing vessels due to disposal barge traffic. Sites are not located within active oil or natural gas tracts. Continued disposal operations are not anticipated to adversely impact existing nearby oil and gas development facilities or tracts, or other socioeconomic resources. Overall, no significant interferences associated with this criterion are expected to result from continued use of the LA-2 and LA-3 sites.

9. Existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

Water quality at the two disposal areas is good, but temporary, localized physical impacts have occurred to sediments and benthic ecology due to past disposal operations. Additionally, dredged material deposited in the past at the two disposal areas was chemically screened prior to disposal, and no known dredged material was disposed of for which chemical concentrations exceeded the range of chemical concentrations approved for ocean disposal.

10. Potentiality for the development or recruitment of nuisance species in the disposal site.

The potential is low due to depth differences between the disposal sites and the likely sources of dredged material.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

No known shipwrecks or other cultural resources occur within 2.7 nmi (5 km) of either the LA-2 or LA-3 disposal sites.

## F. Responses to Comments

### *Comments to the Draft EIS*

The draft EIS was published in the **Federal Register** on January 21, 2005. A 45-day public review and comment period extended from the publication date through March 7, 2005. Six comment letters from various individuals, organizations, and agencies were received during the public review and comment period. In addition to the six comment letters, two public

meetings were held on Wednesday, February 9, 2005, to solicit comments from interested parties. The comments, and associated responses, are summarized topically below.

### *Preferred Alternative*

Two commenters concurred with the preferred alternative selected in the EIS.

### *Site Boundaries for the LA-3 ODMDS*

One commenter questioned the boundary of the LA-3 site relative to the expected deposition pattern for dredged materials on the seafloor. The boundaries of the disposal site were chosen based on historical usage and to ensure that the majority of dredged material falls within the site boundaries given the 1,000 ft (305 m) radius disposal target for the disposal barges. Instantaneous sediment accumulation rates in excess of 1 ft (30 cm) per disposal event were assumed to result in the loss of the existing infaunal community. However, for assessing impacts, the EIS conservatively assumed that the infaunal community would be lost if the deposition rate exceeded 1 ft (30 cm) over a one-year period (this is conservative because the infaunal community is expected to rapidly recover for instantaneous deposition rates of less than 30 cm [1 ft] per disposal event). For all modeled scenarios, the worst-case 1 ft (30 cm) annual deposition contour lies well within the 3,000 ft (915 m) radius site boundary. While a certain quantity of material is expected to settle outside of the site boundary, it is impractical and undesirable to extend the site boundary beyond this distance in an attempt to encompass all of the dredge material that will settle on the ocean bottom. Extending the site boundaries to encompass all of the material expected to settle on the ocean bottom would not alter the conclusion of significance (or lack thereof) concerning adverse impacts on the benthic community determined in the EIS. The 3,000 ft (915 m) radius is considered appropriate for site management purposes.

### *Estimates of Future Disposal Volumes Relative to Site Capacity*

Two commenters asked for clarification of projected disposal volumes at the LA-2 and LA-3 sites. For both management and environmental impact considerations, the dredged material volume capacities specified for LA-2 and LA-3 were based on conservative estimates of the worst-case maximum amount of dredged material requiring ocean disposal in any given year. These estimates account for all known and reasonably anticipated

capital and maintenance dredging projects in the Los Angeles and Orange County regions. It is unlikely that all potential projects would occur simultaneously in any given year. Therefore, the environmental impact analysis considered both the potential worst-case conditions and a more reasonable annual average condition.

For each potential dredging project, the Zone of Siting Feasibility (ZSF) Study evaluated whether disposal at the LA-2 or LA-3 ODMDSs would be economically feasible. For the purposes of establishing the maximum analyzed annual dredged material quantities that could be placed at LA-2 or LA-3, it was assumed that the Los Angeles County projects identified in the ZSF Study (USACE 2003a) would utilize LA-2, and that the Orange County projects would utilize LA-3.

Accordingly, based on the projected dredging volumes from the ZSF study, as well as site management considerations, the LA-2 site would be designated for an annual maximum of 1,000,000 yd<sup>3</sup> (765,000 m<sup>3</sup>) and the LA-3 site would be designated for an annual maximum of 2,500,000 yd<sup>3</sup> (1,911,000 m<sup>3</sup>). These maximum volume designations would accommodate the projected average annual volume requirements as well as provide for substantial annual volume fluctuations. Thus, the Final Rule will amend use of the existing LA-2 site for a higher maximum annual quantity to manage disposal of dredged material generated primarily from the Los Angeles County region, and it would permanently designate the LA-3 ODMDS with an annual quantity adequate to manage disposal of dredged material generated locally from projects to preserve the wetland habitat within the Upper Newport Bay and/or to maintain navigation channels at Newport and Dana Point Harbors.

However, designation of the sites does not preclude material generated in Orange County from being disposed of at LA-2 or material generated in Los Angeles County from being disposed of at LA-3. The choice of which site to use for the disposal of dredged material for individual dredging projects will be based on both economic and environmental factors. Decisions to allow ocean disposal for individual dredging projects are made on a case-by-case basis through the Marine Protection, Research and Sanctuaries Act (MPRSA) Section 103 permitting process or its equivalent process for USACE's Civil Works projects and are subject to subsequent environmental review and documentation.

### *Site Monitoring and Management Plan*

One commenter expressed support for the SMMP, but requested clarification on opportunities for public input to the SMMP. A SMMP has been developed that contains approaches for monitoring impacts to marine organisms, as well as verification of model predictions. Development of this SMMP was based on a review of other SMMPs prepared for similar ocean disposal sites.

The site monitoring reports described in the SMMP will be public documents that will be made available either through posting on the EPA Web site or direct mailing upon request. EPA will accept public comments regarding those reports, although there will not be a formal comment period. Additionally, the public will get an opportunity to comment on any SMMP implementation manual that is prepared by EPA subsequent to this action. No revisions to the SMMP as written are necessary to allow for this level of public input.

### *Relocation of the LA-3 ODMDS*

One commenter indicated that relocating LA-3 was inconsistent with EPA site selection criteria. Although the permanent LA-3 site lies outside of the boundaries of the interim LA-3 site, the permanent site has been disturbed by historical dredged material disposal events. During reviews performed by the U.S. Geological Survey in 1998, a substantial amount of dredged material was noted outside of the interim site boundaries, particularly to the north, northeast, and southeast of the site. This was primarily attributed to disposal short of the targeted disposal area and errors in disposal generally resulting from inaccurate navigation.

Locating the permanent site boundary at the new location (away from the interim site) would redirect future dredged material disposal to an area historically used for disposal (and thus already undisturbed). Additionally, due to the nature of the local topography, the permanent site would be more amenable to monitoring via precision bathymetry. Further, as described in the SMMP, enhanced vessel tracking and monitoring will ensure that future disposal activities occur accurately within the designated target area of the permanent site.

### *Extension of the Interim Designation of LA-3*

One commenter recommended extending the interim designation of LA-3. Congressional authorization for the interim site designation expired December 31, 2002. Requests for another extension would have to be made to

Congress. In any event, the action obviates the need for an extension. Thus, an extension of LA-3's interim site designation is not necessary.

### *Impacts to Areas of Special Biological Significance*

One commenter noted potentials for impacts to Crystal Cove State Park and Area of Special Biological Significance (ASBS) if dredged materials placed at LA-3 were transported shoreward by currents. Dispersion and transport of dredged material disposed at LA-3 was modeled using measured current data collected in the disposal site and nearshore area. Results from the sediment fate model indicated that the dredged material disposed at LA-3 would settle within and immediately adjacent to the disposal site and no appreciable sediment transport toward the nearshore areas is anticipated, particularly given the depth of the LA-3 site. Water quality impacts during dredged material disposal operations at the LA-3 site will be temporary and localized and are not expected to extend to the shallower, nearshore area. Further, the location of the permanent LA-3 site relocates the site away from the Newport submarine canyon. Thus, any potential influences of currents within the canyon would be reduced at the permanent site.

### *Comments to the Final EIS and Proposed Rule*

The Final EIS and Proposed Rule were published in the **Federal Register** on July 18, 2005. A 30-day public review and comment period extended from the publication date through August 18, 2005. No formal comments were received from the public or agencies.

## **G. Regulatory Requirements**

### *1. Consistency With the Coastal Zone Management Act*

Consistent with the Coastal Zone Management Act, EPA prepared a Coastal Zone Consistency Determination (CCD) document based on information presented in the site designation EIS. The CCD evaluated whether the action—permanent designation of LA-3 and management of LA-2 at a higher annual disposal volume—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission (Commission) at their public hearing June 9, 2005. The Commission staff report recommended that the Commission concur with EPA's CCD, which the Commission did by a unanimous vote. The Final Rule is

consistent with the Coastal Zone Management Act.

### *2. Endangered Species Act Consultation*

During development of the site designation EIS, EPA consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of the ocean disposal sites to jeopardize the continued existence of any federally listed species. This consultation process is fully documented in the site designation EIS. NMFS and FWS concluded that use of the disposal sites for disposal of dredged material meeting the criteria for ocean disposal would not jeopardize the continued existence of any federally listed species.

## **H. Administrative Review**

### *1. Executive Order 12866*

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

(a) 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;

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

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

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

This Final Rule should have minimal impact on State, local or tribal governments or communities. Consequently, EPA has determined that this Final Rule is not a "significant regulatory action" under the terms of Executive Order 12866.

### *2. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act

requires that information requests and recordkeeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Final Rule would not establish or modify any information or recordkeeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

### *3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996*

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The site designation and management actions would only have the effect of setting maximum annual disposal volume and providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Final Rule will not have a significant economic impact on a substantial number of small entities.

### *4. Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any year.

This Final Rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The Final Rule would only provide a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government

entities. Thus, the requirements of section 203 of the UMRA do not apply to this Final Rule.

### *5. 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 Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13132 does not apply to this Final Rule.

### *6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This Final Rule does not have tribal implications, as specified in Executive Order 13175. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13175 does not apply to this Final Rule.

### *7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This Executive Order (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, EPA 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 EPA. This Final Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

### *8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance With Administrative Procedure Act*

This Final 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. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, EPA concluded that this Final Rule is not likely to have any adverse energy effects.

### *9. National Technology Transfer 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. This Final Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

### *10. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This Final Rule will be effective October 12, 2005.

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: August 31, 2005.

**Alexis Strauss,**  
*Acting Regional Administrator, Region IX.*

■ In consideration of the foregoing, EPA is amending part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

**PART 228—[AMENDED]**

■ 1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by adding paragraph (l)(11) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(l) \* \* \*

(11) Newport Beach, CA, (LA-3) Ocean Dredged Material Disposal Site—Region IX.

(i) Location: Center coordinates of the circle-shaped site are: 33°31'00" North Latitude by 117°53'30" West Longitude (North American Datum from 1983), with a radius of 3,000 feet (915 meters).

(ii) Size: 0.77 square nautical miles.

(iii) Depth: 1,500 to 1,675 feet (460 to 510 meters).

(iv) Use Restricted to Disposal of: Dredged materials.

(v) Period of Use: Continuing use.

(vi) Restrictions: Disposal shall be limited to dredged materials that comply with EPA's Ocean Dumping Regulations.

\* \* \* \* \*

[FR Doc. 05-18024 Filed 9-9-05; 8:45 am]

**BILLING CODE 6560-50-P**

# Proposed Rules

Federal Register

Vol. 70, No. 175

Monday, September 12, 2005

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. FV05-987-1 PR]

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

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

**DATES:** Comments must be received by October 12, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov);

or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be

available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

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

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

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

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

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

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

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

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

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

The committee met on June 16, 2005, and unanimously recommended 2005-06 crop year expenditures of \$169,197 and an assessment rate of \$0.95 per hundredweight of dates handled. In comparison, last year's budgeted

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

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

The budgeted administrative expenses for the 2005–06 crop year include \$85,697 for labor and office expenses. This compares to \$90,427 in labor and office expenses in 2004–05. In addition, \$70,000 has been budgeted for marketing and promotion under the program for the 2005–06 crop year. This compares to \$112,499 in budgeted marketing and promotion expenses for the 2004–05 crop year. A total of \$14,303 is budgeted as a contingency reserve for 2005–06 to build up its financial reserve. The committee did not include a contingency reserve in last year's budget. The committee also proposed that \$10,000 be included in its 2005–2006 budget for an economic analysis of its promotion activities. Last year's budget did not include funds for this purpose.

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

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

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

C = 2005–06 expenses (\$169,197).

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

E = 2005–06 expected shipments (190,000 hundredweight).  $(B - A + C - D) \div E = \$0.95$  per hundredweight.

Estimated shipments should provide \$180,500 in assessment income. Income derived from handler assessments and \$2,000 from the cull surplus fund would

be adequate to cover budgeted expenses. Funds in the reserve are expected to total about \$14,303 by September 30, 2006, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years as required under § 987.72(c)).

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

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

#### Initial Regulatory Flexibility Analysis

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

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

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

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

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

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

The committee reviewed and unanimously recommended 2005–06 expenditures of \$169,197 which include marketing and promotion programs. Prior to arriving at this budget, the committee considered alternative expenditure levels and alternative assessment levels. The committee agreed that the increased assessment rate was appropriate to cover expenses and build up its operating reserve to a

satisfactory level (\$14,303). The assessment rate of \$0.95 per hundredweight of assessable dates was then determined by applying the following formula where:

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

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

C = 2005–06 expenses (\$169,197).

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

E = 2005–06 expected shipments (190,000 hundredweight). (B – A + C – D) E ÷ \$0.95 per hundredweight.

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

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

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

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically

reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2005–06 crop year begins on October 1, 2005, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

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

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

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

**Authority:** 7 U.S.C. 601–674.

2. Section 987.339 is revised to read as follows:

#### **§ 987.339 Assessment rate.**

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

Dated: September 6, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–17963 Filed 9–9–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2005–22384; Directorate Identifier 2005–NM–131–AD]

RIN 2120–AA64

#### **Airworthiness Directives; Airbus Model A300 B2 Series Airplanes, Model A300 B4 Series Airplanes, Model A310–200 Series Airplanes, Model A310–300 Series Airplanes, and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus transport category airplanes. This proposed AD would require repetitive eddy current inspections for cracks of the stiffener fittings of the fuselage at frame (FR) 12A, and corrective actions if necessary. This proposed AD also provides a terminating action for the inspections. This proposed AD results from reports of cracks on the upper attachment fitting of the stiffener fitting at FR12A. We are proposing this AD to prevent failure of the stiffener fittings, which could result in the reduced structural integrity of the floor and rods around FR12A.

**DATES:** We must receive comments on this proposed AD by October 12, 2005.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.

- Fax: (202) 493–2251.

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

Contact Jacques Leborgne, Airbus Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac

Cedex, France, fax (+33) 5 61 93 36 14, for service information identified in this proposed AD for Model A300 B2 series airplanes and Model A300 B4 series airplanes. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD for Model A310-200 series airplanes, Model A310-300 series airplanes, and Model A300-600 series airplanes.

**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:**

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number "FAA-2005-22384; Directorate Identifier 2005-NM-131-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

**Examining the Docket**

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

**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B2 and A300 B4 series airplanes, Model A310-200 and -300 series airplanes, and Model A300-600 series airplanes.

The DGAC advises that there are reports of cracks on the upper attachment fitting of the stiffener fitting on the floor beam at frame (FR) 12A, right-hand and left-hand sides of the fuselage. The DGAC states that the cracks are due to a combined effect of the pressurization of the cabin and bending induced by thermal effects which generates a longitudinal force in the floor beam, causing a high level of fatigue in the fitting. This condition, if not corrected, could result in failure of the stiffener fittings, and consequent reduced structural integrity of the floor and rods around FR12A.

**Relevant Service Information**

Airbus has issued Service Bulletin A300-53-0365, Revision 01 (for Model A300 B2 and A300 B4 series airplanes); Service Bulletin A300-53-6138, Revision 01 (for Model A300-600 series airplanes); and Service Bulletin A310-53-2117, Revision 01 (for Model A310-200 and A310-300 series airplane); all dated April 4, 2005. The service bulletins describe procedures for repetitive eddy current inspections for cracks of the stiffener fittings of the fuselage at FR12A, and corrective action if necessary. Doing the corrective action eliminates the need for the repetitive inspection. The corrective action includes replacing the existing fitting on FR12A with a FR12A crossbeam and installing a new web between FR12A and FR13 at stringer 26.

The service bulletins refer to Airbus Service Bulletin A300-53-0364, Revision 02, dated September 24, 2004 (for Model A300 B2 and B4 series airplanes); Service Bulletin A300-53-6137, Revision 03, dated April 4, 2005 (for Model A300-600 series airplanes); and Service Bulletin A310-53-2116, Revision 02, dated September 24, 2004 (for Model A310-200 and -300 series airplane); as the appropriate sources of service information for doing the corrective action.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F-2005-084, dated May 25, 2005, to ensure the

continued airworthiness of these airplanes in France.

**FAA's Determination and Requirements of the Proposed AD**

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletins."

**Differences Between the Proposed AD and Service Bulletins**

Unlike the procedures described in Airbus Service Bulletins A300-53-0365, Revision 01; A300-53-6138, Revision 01; and A310-53-2117, Revision 01; this proposed AD would not permit further flight if cracks are detected in the stiffener fittings of the fuselage at FR12A. We have determined that, because of the safety implications and consequences associated with that cracking, any cracked fitting must be replaced before further flight.

The service bulletins specify to contact the manufacturer for fastener requirements if stiffener fitting FR12A has been replaced, but this proposed AD would require contacting the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, requirements that we or the DGAC approve would be acceptable for compliance with this proposed AD.

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for reporting results, this proposed AD would not require those actions. We do not need this information from operators.

### Difference Between French Airworthiness Directive and This Proposed AD

The applicability of French airworthiness directive F-2005-084, dated May 25, 2005, excludes airplanes that accomplished Airbus Service Bulletin A300-53-0364, dated December 1, 2003; Revision 01, dated May 5, 2004; or Revision 02, dated September 24, 2004; or Airbus Service Bulletin A300-53-6137, dated December 1, 2003; Revision 01, dated May 5, 2004; Revision 02, dated September 24, 2004; or Revision 03, dated April 4, 2005; or Airbus Service Bulletin A310-53-2116, dated December 1, 2003; Revision 01, dated May 5, 2004; or Revision 02, dated September 24, 2004; in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in the latest revision of the service bulletins, as applicable. This requirement would ensure that the actions specified in the service bulletins and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

### Costs of Compliance

This proposed AD would affect about 202 airplanes of U.S. registry. The proposed inspection would take between 57 and 64 work hours per airplane, at an average labor rate of \$65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is between \$748,410 and \$840,320, or between \$3,705 and \$4,160 per airplane, per inspection cycle.

### Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that

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

### Regulatory Findings

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

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13

by adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA-2005-22384; Directorate Identifier 2005-NM-131-AD.

### Comments Due Date

(a) The FAA must receive comments on this AD action by October 12, 2005.

### Affected ADs

(b) None.

**Applicability:** (c) This AD applies to Airbus Model A300 B2-1A, B2-1C, B2K-3C, and B2-203 airplanes; Model A300 B4-103, and B4-203 airplanes; Model A300 B4-601, B4-603, B4-620, and B4-622 airplanes; Model A300 B4-605R and B4-622R airplanes; Model A300 F4-605R and F4-622R airplanes; Model A300 C4-605R Variant F airplanes; Model A310-203, -204, -221, and -222 airplanes; and Model A310-304, -322, -324, and -325 airplanes; certificated in any category; except for airplanes on which AIRBUS Modification 12662 has been done in production.

### Unsafe Condition

(d) This AD results from reports of cracks on the upper attachment fitting of the stiffener fitting at frame (FR) 12A. We are issuing this AD to prevent failure of the stiffener fittings, which could result in the reduced structural integrity of the floor and rods around FR12A.

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

### Inspections

(f) At the applicable initial inspection threshold specified in Table 1 of this AD or within the applicable grace period specified in Table 2 of this AD, whichever occurs later: Do an eddy current inspection for cracks of the stiffener fittings of the fuselage at FR12A, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-53-0365, Revision 01 (for Model A300 B2-1A, B2-1C, B2K-3C, and B2-203 airplanes, and Model A300 B4-2C, B4-103, and B4-203 airplanes); Service Bulletin A300-53-6138, Revision 01 (for Model A300 B4-601, B4-603, B4-620, and B4-622 airplanes, Model A300 B4-605R and B4-622R airplanes, Model A300 F4-605R and F4-622R airplanes, and Model A300 C4-605R Variant F airplanes); or Service Bulletin A310-53-2117, Revision 01 (for Model A310-203, -204, -221, and -222 airplanes, and Model A310-304, -322, -324, and -325 airplanes); all dated April 4, 2005; as applicable.

Repeat the inspection thereafter at intervals not to exceed the applicable compliance time specified in Table 1 of this AD until the actions specified in paragraph (h) of this AD are done.

TABLE 1.—COMPLIANCE TIMES FOR INITIAL AND REPETITIVE INSPECTIONS

For airplanes identified as—	Do the initial inspection prior to the accumulation of—	And repeat at intervals not to exceed—
Configuration 01 in Airbus Service Bulletin A300–53–0365, Revision 01, dated April 4, 2005.	19,300 total flight cycles .....	11,450 flight cycles.
Configuration 02 in Airbus Service Bulletin A300–53–0365, Revision 01, dated April 4, 2005.	15,500 total flight cycles .....	9,200 flight cycles.
Configuration 01 in Airbus Service Bulletin A300–53–6138, Revision 01, dated April 4, 2005.	19,300 total flight cycles .....	11,450 flight cycles.
Configuration 02 in Airbus Service Bulletin A300–53–6138, Revision 01, dated April 4, 2005.	17,600 total flight cycles .....	11,450 flight cycles.
Configuration 03 in Airbus Service Bulletin A300–53–6138, Revision 01, dated April 4, 2005.	12,700 total flight cycles .....	8,000 flight cycles.
Configuration 04 in Airbus Service Bulletin A300–53–6138, Revision 01, dated April 4, 2005.	10,200 total flight cycles .....	6,400 flight cycles.
Configuration 01 in Airbus Service Bulletin A310–53–2117, Revision 01, dated April 4, 2005.	19,300 total flight cycles .....	11,450 flight cycles.
Configuration 02 in Airbus Service Bulletin A310–53–2117, Revision 01, dated April 4, 2005.	17,600 total flight cycles .....	11,450 flight cycles.
Configuration 03 in Airbus Service Bulletin A310–53–2117, Revision 01, dated April 4, 2005.	12,700 total flight cycles .....	8,000 flight cycles.

TABLE 2.—GRACE PERIOD FOR THE INITIAL INSPECTION

For Airbus model—	Grace period is—
A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes .....	Within 2,500 flight cycles after the effective date of this AD.
A300 B4–2C, B4–103, and B4–203 airplanes; A300 B4–601, B4–603, B4–620, and B4–622 airplanes; A300 B4–605R and B4–622R airplanes; A300 F4–605R and F4–622R airplanes; A300 C4–605R Variant F airplanes; A310–203, –204, –221, and –222 airplanes; and A310–304, –322, –324, and –325 airplanes.	Within 2,000 flight cycles after the effective date of this AD.

**Corrective Action**

(g) If any cracking is found during any inspection required by paragraph (f) of this AD, before further flight, do the replacement and installation specified in paragraph (h) of this AD.

**Terminating Action**

(h) Replacing the existing fitting on FR12A with a FR12A crossbeam and installing a new web between FR12A and FR13 at stringer 26 in accordance with Airbus Service Bulletin A300–53–0364, Revision 02, dated September 24, 2004 (for Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes, and Model A300 B4–2C, B4–103, and B4–203

airplanes); Service Bulletin A300–53–6137, Revision 03, dated April 4, 2005 (for Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes, Model A300 B4–605R and B4–622R airplanes, Model A300 F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes); or Service Bulletin A310–53–2116, Revision 02, dated September 24, 2004 (for Model A310–203, –204, –221, and –222 airplanes, and Model A310–304, –322, –324, and –325 airplanes); as applicable; and except as required by paragraph (i) of this AD; constitutes terminating action for the requirements of this AD.

(i) Where the service bulletins specify to contact the manufacturer for certain

information, before further flight, do the terminating action according to a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DGAC (or its delegated agent).

**Actions Accomplished According to Previous Issue of Service Bulletin**

(j) Actions accomplished before the effective date of this AD according to the Airbus service bulletins specified in Table 3 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 3.—PREVIOUS ISSUES OF SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
A300–53–0364 .....	Original .....	December 1, 2003.
A300–53–0364 .....	01 .....	May 5, 2004.
A300–53–0365 .....	Original .....	December 1, 2003.
A300–53–6137 .....	Original .....	December 1, 2003.
A300–53–6137 .....	01 .....	May 5, 2004.
A300–53–6137 .....	02 .....	September 24, 2004.
A300–53–6138 .....	Original .....	December 1, 2003.
A310–53–2116 .....	Original .....	December 1, 2003.
A310–53–2116 .....	01 .....	May 5, 2004.
A310–53–2117 .....	Original .....	December 1, 2003.

**No Reporting Required**

(k) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

(l) 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.

**Related Information**

(m) French airworthiness directive F-2005-084, dated May 25, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on August 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 05-17980 Filed 9-9-05; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2005-22383; Directorate Identifier 2005-NM-102-AD]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 747-100B SUD, 747-200B, 747-300, 747-400, and 747-400D Series Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747-100B SUD, 747-300, 747-400, and 747-400D series airplanes; and Model 747-200B series airplanes having a stretched upper deck. This proposed AD would require repetitively inspecting for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions if necessary. This proposed AD results from new reports of severed tension ties, as well as numerous reports of cracked tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. We are proposing this AD

to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by October 27, 2005.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL-401, Washington, DC 20590.
- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Ivan Li, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6437; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number "FAA-2005-22383; Directorate Identifier 2005-NM-102-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

**Examining the Docket**

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

**Discussion**

We previously issued AD 2005-05-08, amendment 39-13997 (70 FR 12113, March 11, 2005). That AD applies to certain Boeing Model 747-100B SUD, -300, -400, and -400D series airplanes. That AD requires a one-time inspection for discrepancies of the fuselage frame to tension tie joints at body stations (BS) 1120 through 1220, and to determine if steel splice plates are installed on the fuselage frames, and related investigative and corrective actions. That AD was prompted by reports of severed tension ties found at the fuselage frame joints at BS 1120 and 1140. These severed tension ties resulted from fatigue cracking due to an incorrect configuration (installation of aluminum splice plates instead of steel splice plates during the manufacturing process).

Since we issued AD 2005-05-08, we have received additional reports of severed tension ties. While these severed tension ties were also attributed to fatigue, the tension ties in these cases were properly configured according to the applicable Boeing Engineering Drawings. We have also received numerous reports of fatigue cracking of tension ties, as well as broken fasteners and cracks in the frame and shear ties adjacent to tension ties for the upper deck between BS 1120 and 1220. Also, we have received reports of cracking in the shear web between the BS 1120 and BS 1140 tension ties. Cracking of the tension ties, shear webs, and frames of the upper deck; if not corrected; could result in rapid decompression of the airplane.

Certain Boeing 747-200B series airplanes have been modified under a certain Boeing-owned supplemental type certificate to include a stretched upper deck (SUD). These airplanes

would also be subject to the same unsafe condition revealed on Boeing Model 747-100B SUD, -300, -400, and -400D series airplanes.

#### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005. The service bulletin describes procedures for repetitive "Stage 1" and "Stage 2" inspections for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220; and related investigative and corrective actions if necessary.

The procedures for Stage 1 inspections involve the following inspections to detect cracking or broken, loose, or missing fasteners:

- A detailed inspection of the tension ties and steel plates from BS 1120 through BS 1220.
- A detailed inspection of the shear web components that attach to the BS 1120 and 1140 tension ties.
- A detailed inspection of each frame from two stringers above to two stringers below the tension ties from BS 1120 through BS 1220.

If no severed tension tie is found during a Stage 1 inspection, but a crack is found in a tension tie, steel plate, shear web component, or frame; or a broken, loose, or missing fastener is found; the service bulletin specifies doing a "Structure Repair," which includes further investigative actions. Procedures for the Structure Repair include removing fasteners, performing open-hole high frequency eddy current (HFEC) inspections for cracking, repairing any cracking, and installing new fasteners, as applicable. For repairing certain conditions, the service bulletin specifies to contact Boeing for instructions.

If a severed tension tie is found during a Stage 1 inspection, the service bulletin specifies further investigative actions that involve removing certain fasteners and steel plates, and doing additional open-hole HFEC inspections and detailed inspections of certain fastener holes, adjacent tension ties, the frame web, the frame inner chord, the fail-safe chord, shear ties, and fasteners to detect cracking or broken, loose, or missing fasteners. The service bulletin specifies to contact Boeing for instructions for repairing the severed tension tie, and doing the Structure Repair described previously for any other cracks or broken, loose, or missing fasteners.

Stage 2 inspections are more intensive inspections than Stage 1 inspections and are intended for airplanes with a higher number of total flight cycles.

Accomplishing the initial Stage 2 inspection eliminates the need for the Stage 1 inspections. The procedures for Stage 2 inspections involve the following actions:

- Removing certain fasteners and steel plates and performing open-hole HFEC inspections for cracking of the fastener holes in the tension ties, frames, and steel plates.
- Performing surface HFEC inspections for cracking around other fastener locations and in other areas of the tension ties.
- Performing a detailed inspection of each entire tension tie and the attaching fasteners to detect cracking or broken, loose, or missing fasteners.
- Performing a detailed inspection of the shear web components that attach to the tension ties to detect cracking or broken, loose, or missing fasteners.
- Performing a detailed inspection of each frame from two stringers above to two stringers below the tension ties to detect cracking or broken, loose, or missing fasteners.
- Performing an open-hole HFEC inspection for cracking of any frame at which an insulation blanket stud goes through a hole in the frame.

If no tension tie is found severed during a Stage 2 inspection, but a crack is found in a tension tie, steel plate, shear web component, or frame; or a broken, loose, or missing fastener is found; the service bulletin specifies doing the Structure Repair, and installing steel plates and new fasteners.

If a severed tension tie is found during a Stage 2 inspection, the service bulletin specifies further investigative actions that involve removing certain fasteners and steel plates, and doing additional detailed inspections of the frame common to the severed tension tie; including the frame web, frame inner chord, fail-safe chord, shear ties, and fasteners; to detect cracking or broken, loose, or missing fasteners. The service bulletin specifies to contact Boeing for instructions for repairing the severed tension tie; and doing the Structure Repair for any other crack or broken, loose, or missing fasteners.

As part of the procedures for the Structure Repair, the service bulletin describes procedures for an "Oversize Hole Repair," which may be used to repair a crack found in a fastener hole. The procedures for the Oversize Hole Repair include oversizing the hole to remove the crack, doing an open-hole HFEC inspection to make sure the crack has been removed, repeating the oversizing until the crack is removed, and installing new fasteners. The service bulletin specifies contacting

Boeing for instructions if cracking is outside specified limits.

The service bulletin also specifies reporting findings from both Stage 1 and Stage 2 inspections to Boeing.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Paragraph 1.E., "Compliance," of the service bulletin specifies a compliance time for the initial Stage 1 inspection of 8,000 total flight cycles, 1,500 flight cycles after the original issue date of the service bulletin, or 4,000 flight cycles after inspection in accordance with Boeing Service Bulletin 747-53-2483, whichever is later. (AD 2005-05-08, described previously, requires inspections in accordance with Boeing Service Bulletin 747-53-2483, Revision 1, dated August 28, 2003.) The repetitive interval for Stage 1 inspections is 4,000 flight cycles. The service bulletin specifies that Stage 1 inspections end when Stage 2 inspections apply. The service bulletin specifies that the initial Stage 2 inspection should be done before the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after the original issue date of the service bulletin, whichever is later. The service bulletin specifies a repetitive interval of 3,000 flight cycles for the Stage 2 inspections.

#### Other Relevant Rulemaking

We have previously issued AD 2004-07-22, amendment 39-13566 (69 FR 18250, April 7, 2004). That AD applies to all Boeing Model 747 series airplanes, and requires revising the FAA-approved maintenance or inspection program to include repetitive inspections for discrepancies of various structural significant items (SSIs); as listed in Boeing Document No. D6-35022, "Supplemental Structural Inspection Document (SSID)," Revision G, dated December 2000 (referred to after this as "the SSID"); and repair if necessary. The repetitive inspections of the tension ties that would be required by this proposed AD are approved as an alternative method of compliance for the inspections of SSI F-19A of the SSID, as required by paragraphs (c) and (d) of AD 2004-07-22. All other provisions of AD 2004-07-22 continue to apply.

#### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are

proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

#### Differences Between the Proposed AD and Service Information

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the

certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization whom we have authorized to make those findings.

The Accomplishment Instructions of the service bulletin specifies reporting inspection findings to Boeing. This proposed AD would not require that action. We do not need this information from operators.

The service bulletin specifies a grace period relative to original issue date of the service bulletin; however, this proposed AD would require compliance before the specified compliance time after the effective date of this AD.

These differences have been coordinated with the manufacturer.

#### Clarification of Compliance Time for Stage 1 Inspections

As explained previously, the referenced service bulletin specifies a compliance time for the Stage 1 inspections of 8,000 total flight cycles, 1,500 flight cycles after the original issue date of the service bulletin, or 4,000 flight cycles after inspection in accordance with Boeing Service Bulletin 747-53-2483, whichever is later. AD 2005-05-08, described previously, requires accomplishment of Boeing Service Bulletin 747-53-2483 for airplanes listed in that service bulletin. However, we find that this proposed AD would apply to certain airplanes not subject to AD 2005-05-08. Thus, we find that, for airplanes not subject to the

inspection in Boeing Service Bulletin 747-53-2483, the applicable compliance time for the Stage 1 inspections that would be required by this proposed AD is 8,000 total flight cycles, or 1,500 flight cycles after the effective date of this AD, whichever is later. We have added a statement to paragraph (f)(1) of this proposed AD to clarify this compliance time.

#### Interim Action

We consider this proposed 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.

#### Costs of Compliance

There are about 622 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Stage 1 Inspection, per inspection cycle*.	19	\$65	\$1,235, per inspection cycle .....	76	\$93,860, per inspection cycle.*
Stage 2 Inspection, per inspection cycle.	83	65	\$5,395, per inspection cycle .....	76	\$410,020, per inspection cycle.

\* Completing the initial Stage 2 inspection ends the repetitive Stage 1 inspections.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the

AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Boeing:** Docket No. FAA-2005-22383;  
Directorate Identifier 2005-NM-102-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by October 27, 2005.

#### Affected ADs

(b) Accomplishing the requirements of paragraph (f) of this AD terminates the corresponding inspection requirements for the upper deck tension tie as required by paragraphs (c) and (d) of AD 2004-07-22, amendment 39-13566, as those paragraphs apply to inspections of SSI F-19A, as identified in Boeing Document No. D6-35022, "Supplemental Structural Inspection Document," Revision G, dated December 2000. All other requirements of AD 2004-07-22 continue to apply.

**Applicability:** (c) This AD applies to Boeing Model 747-100B SUD, 747-300, 747-400, and 747-400D series airplanes; and Model 747-200 series airplanes having a stretched upper deck; certificated in any category; as identified in Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005.

#### Unsafe Condition

(d) This AD results from new reports of severed tension ties, as well as numerous reports of cracked tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. We are issuing this AD to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression of the airplane.

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

#### Repetitive Inspections and Corrective Actions

(f) Do repetitive detailed and high frequency eddy current inspections, as applicable, for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions as applicable, by doing all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, except as provided by paragraphs (g) and (h) of this AD. Do the initial and repetitive Stage 1 and Stage 2 inspections at the applicable times specified in Paragraph 1.E., "Compliance," of the service bulletin, except as provided by paragraphs (f)(1), (f)(2), and (f)(3) of this AD. Any applicable investigative and corrective actions must be done before further flight. Doing the initial Stage 2 inspection ends the repetitive Stage 1 inspections.

(1) For any airplane not identified in and subject to inspections in accordance with Boeing Service Bulletin 747-53-2483: Do the initial Stage 1 inspection in accordance with Boeing Alert Service Bulletin 747-53A2507 before the accumulation of 8,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later.

(2) Where Paragraph 1.E., "Compliance," of the service bulletin specifies a compliance time relative to the original issue date of the service bulletin, this AD requires compliance before the specified compliance time after the effective date of this AD.

(3) For any airplane that reaches the applicable compliance time for the initial Stage 2 inspection (as specified in Table 1, Compliance Recommendations, under paragraph 1.E. of the service bulletin) before reaching the applicable compliance time for the initial Stage 1 inspection: Doing the initial Stage 2 inspection eliminates the need to do the Stage 1 inspection.

#### Exception to Corrective Action Instructions

(g) If any discrepancy; including but not limited to cracking, or broken, loose, or missing fasteners; is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with paragraph (i) of this AD.

#### No Reporting Requirement

(h) Although Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, specifies reporting inspection findings to the manufacturer, this AD does not include that requirement.

#### Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on August 24, 2005.

#### Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 05-17979 Filed 9-9-05; 8:45 am]

**BILLING CODE 4910-13-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[R03-OAR-2005-VA-0007;FRL-7966-6

#### Approval and Promulgation of Air Quality Implementation Plans; VA; Redesignation of the City of Fredericksburg, Spotsylvania County, and Stafford County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. Virginia is requesting that the city of Fredericksburg, Spotsylvania County, and Stafford County (the Fredericksburg Nonattainment Area) be redesignated as attainment for the eight-hour ozone national ambient air quality standard (NAAQS). The Commonwealth's SIP revision establishes a maintenance plan for the Fredericksburg Nonattainment Area that provides requirements for continued attainment of the eight-hour ozone NAAQS for the next 10 years. EPA is proposing approval of the redesignation request and revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before October 12, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0007 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.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov).  
Mail: R03-OAR-2005-VA-0007, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R03-OAR-2005-VA-0007. 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.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail 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://www.docket.epa.gov/rmepub/>, although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

**SUPPLEMENTARY INFORMATION:** On May 2, 2005, Virginia Department of

Environmental Quality (VADEQ) formally submitted a redesignation request for the Fredericksburg Nonattainment Area to attainment of the eight-hour NAAQS for ozone. On May 4, 2005, Virginia submitted a maintenance plan for the Fredericksburg Nonattainment Area as a SIP revision, to assure continued attainment over the next 10 years.

### I. Background

The Fredericksburg Nonattainment Area was designated as moderate eight-hour ozone nonattainment status on April 30, 2004 (69 FR 23857), based on its exceedance of the health-based standards for ozone. Under section 107(d)(3)(E) of the CAA, the following five criteria must be met for an ozone nonattainment area to be redesignated to attainment:

1. The area must meet the ozone NAAQS.
2. The area must have a fully approved SIP under section 110(k).
3. The area must show improvement in air quality due to permanent and enforceable reductions in emissions.
4. The area must meet all requirements applicable under section 110 and part D.
5. The area must have a fully approved maintenance plan under section 175A of the CAA.

### II. Summary of Virginia's Submittal

The following is a description of how the Commonwealth of Virginia's May 2, 2005 and May 4, 2005 submittals satisfy the five requirements of section 107(d)(3)(E). EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

#### A. Attainment of the Ozone NAAQS in the Fredericksburg Nonattainment Area

Section 181(b)(2)(A) of the CAA states that the EPA Administrator shall determine whether an area has achieved the ozone standard based on the design value of that area. The design value for an area is based on the three-year average (2002-2004) of the monitored annual fourth-highest daily maximum eight-hour average ozone concentration. In the Fredericksburg Nonattainment Area, there is one ozone monitor, located in Stafford County, that measures air quality with respect to ozone. According to the Code of Federal

Regulations, 40 CFR part 50, Appendix I, which establishes the procedure for interpreting ozone monitoring data, the Fredericksburg Nonattainment Area attained the ozone standard for the most recent three-year period, 2002-2004. The data collected at the Stafford County monitor satisfies the CA requirement that the three-year average of the annual fourth-highest daily maximum eight-hour average ozone concentration is less than or equal to 0.08 parts per million (ppm). The Commonwealth of Virginia's request for redesignation for the Fredericksburg Nonattainment Area indicates that the data was quality assured in accordance with 40 CFR part 58. The VADEQ uses the Aerometric Information Retrieval System (AIRS) as the permanent database to maintain its data and quality assures the data transfers and content for accuracy.

#### B. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Stafford County is the only locality of the three in the Fredericksburg Nonattainment Area that was subject to Federal ozone requirements for an one-hour ozone nonattainment area. Stafford County was a part of the Northern Virginia Ozone Nonattainment Area, therefore, subject to SIP requirements for serious (section 182(c) of the CAA) and severe (section 182(d) of the CAA) ozone nonattainment areas. Certain control measures developed to meet the severe nonattainment area requirements will continue to apply in Stafford County.

Sections 182(a) through 182(d) of the CAA establish specific requirements for nonattainment areas and for areas located in the Ozone Transport Region (OTR). As mentioned, Stafford County is the only jurisdiction in the Fredericksburg Nonattainment Area that was subject to these provisions. Pursuant to section 110 of the CAA, EPA has previously approved as part of the Commonwealth of Virginia's SIP regulations and other measures that fully satisfy the requirements of section 182(a) through 182(d), as described below:

1. Section 182(d) Requirements for Areas Designated Severe and Above
  - a. Requirements for annual emissions statements from industries;
  - b. Preconstruction review (permit) program for new industry and expansions;
  - c. General conformity requirements;
  - d. Case-by-case control technology determinations for all major volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) sources not covered by an

EPA control technology guideline (CTG);

- e. Requirement for vapor recovery controls for emissions from filling vehicles with gasoline (Stage II);
- f. Enhanced monitoring (source emissions) program: photochemical assessment monitoring stations (PAMS);
- g. National Low Emissions Vehicle (NLEV);
- h. Oxygenated fuels program;
- i. Requirement for controls for all major (25 tons per year (tpy)) VOC sources;
- j. Requirement for controls for all major (25 tpy) NO<sub>x</sub> sources; and,
- k. Requirement for major sources to pay a penalty fee.

## 2. Section 184(b) (Areas Located in OTR)

- a. Regulations requiring reasonably available control technology (RACT) with respect to all sources of VOC covered by a CTG;
- b. VOC controls on landfills;
- c. Corrections to existing regulatory program requiring controls for certain source types;
- d. The inclusion of Stafford County in the enhanced inspection and maintenance (I/M) program;
- e. VOC controls (Ozone Transport Commission rules); and,
- f. NSR for the OTR.

## 3. Additional Plan Submittals

In addition to the above, the Commonwealth's SIP contains the following previously approved elements that support Virginia's attainment plan for the Fredericksburg Nonattainment Area.

- a. Comprehensive inventory of emissions;
- b. Proposed SIP revision to achieve a 15 percent reduction in VOC emissions for the Washington DC–MD–VA nonattainment area;
- c. Final SIP revision to achieve a 15 percent reduction in VOC emissions for the Washington DC–MD–VA nonattainment area;
- d. Final SIP revision, Phase I attainment plan, and revision to the SIP to achieve a 15 percent reduction in VOC emissions and revision to the 1990 base year emissions inventory for the Washington DC–MD–VA nonattainment area;
- e. Final SIP revision to the SIP to achieve a 15 percent reduction in VOC emissions for the Washington DC–MD–VA nonattainment area;
- f. Revised SIP revision, Phase I attainment plan for the Washington DC–MD–VA nonattainment area/appendices; and,
- g. Open burning regulations.

## C. Demonstration of Permanent and Enforceable Improvement

Between 2002 and 2004, VOC emissions were reduced by 1.5 tons per day (tpd) NO<sub>x</sub> emissions were reduced by 2.7 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the Fredericksburg Nonattainment Area:

1. Programs Current by in Effect
  - a. NLEV;
  - b. Open burning restrictions for Stafford County only;
  - c. CTG RACT requirements for Stafford County only;
  - d. Non-CTG RACT requirements for Stafford County only;
  - e. Stage I and Stage II vapor recovery requirements for Stafford County only;
  - f. Reformulated gasoline requirements for Stafford County only;
  - g. Area source VOC regulations concerning portable fuel containers; mobile vehicle refinishing; architectural and industrial maintenance coatings; solvent cleaning; and, consumer product for Stafford County only;
  - h. Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,
  - i. Low-sulfur gasoline.

## 2. Other Mobile Programs

Additionally, the following programs are in place and are either effective or due to become effective:

- a. Heavy-duty diesel on-road (2004/2007) and low-sulfur on-road (2006); final EPA approval January 18, 2001 (66 FR 5002); and
- b. Non-road emission standards (2008) and off-road diesel fuel (2007/2010); final EPA approval June 29, 2004 (69 FR 39858).

## 3. Additional Air Quality Improvements

Lastly, to further improve air quality and to provide room for industrial and population growth while maintaining emissions in the area to less than 2004 levels, the Commonwealth of Virginia has initiated rulemaking to implement the following programs.

- a. Implement the Stage I requirements in Fredericksburg and Spotsylvania;
- b. Implement the open burning restriction requirements in Fredericksburg and Spotsylvania; and,
- c. Implement existing source CTG RACT requirements in Fredericksburg and Spotsylvania.

In addition to the permanent and enforceable measures, the NO<sub>x</sub> Budget Training Program regulations took effect in 2003. There are currently no subject sources located in the Fredericksburg area, but this area can reasonably expect

to indirectly benefit in terms of improved regional air quality due to this program. Additionally, the Clean Air Interstate Rule (CAIR), final EPA approval May 12, 2005 (70 FR 25161), should have positive impacts on the Commonwealth's air quality by the years 2009 and 2015.

## D. Section 110 and Part D Requirements

Stafford County is the only locality in the Fredericksburg Nonattainment Area that has been subject to Federal ozone requirements. Prior to the eight-hour nonattainment area designations, Stafford County was a part of the Northern Virginia Ozone Nonattainment Area and thus subject to SIP requirements for serious and severe ozone nonattainment areas. Therefore, Stafford County is the only area to be subject to section 110(a)(2) and Part D requirements that were applicable prior to the redesignation submittal. There are multiple similarities within these requirements.

### 1. Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for nonattainment plans. Most of the provisions of this section are the same as those contained in the pre-amended CAA. The Commonwealth of Virginia has already fulfilled all pre-amendment CAA requirements pertaining to Stafford County, which is the only county in the Fredericksburg Nonattainment Area that is affected by these requirements.

### 2. Part D Requirements

Virginia's existing SIP satisfies the requirements of Part D of the CAA. Key elements of the Part D submittals are contained in Subpart 1 (Nonattainment Areas in General) and Subpart 2 (Additional Provisions for Ozone Nonattainment Areas).

a. *Subpart 1.* Section 172(c), Nonattainment Plan Provisions, has been met by a previous SIP revision, and its requirements are identical to those found in section 110(a)(2) and Part D. Section 172(c) requirements are as follows:

1. Provisions for implementation of all reasonably available control measures;
2. Demonstration of reasonable further progress;
3. Comprehensive inventory of emissions;
4. Identification and quantification of new source emissions;
5. Permits for new and modified sources;
6. Enforceable emissions limitations;
7. Contingency measures;
8. Section 173(a) contains requirements for issuing permits,

including offsets and the application of the lowest achievable emission rate (LAER); and

9. Section 176 requires the state to develop transportation and general conformity procedures to be submitted as a SIP revision.

*b. Subpart 2.* The specific requirements of section 182(a) through (d) have been met by the Commonwealth's SIP. These sections require that specific control measures and other requirements be adopted and implemented. These requirements were addressed above in section B. In addition to sections 182(a) thru 182(d) requirements, Virginia had to demonstrate that it would achieve a VOC emission reduction of 15 percent. Finally, the SIP had to include an attainment demonstration supported by photochemical modeling.

### 3. Conformity Process

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirements 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"). Section 176 further provides that state conformity revisions must be consistent with the Federal conformity regulations that the CAA required EPA to promulgate. Although Federal conformity rule changes are still pending, EPA believes that it is reasonable to interpret conformity requirements as not applying for purposes of evaluating a redesignation request under section 107(d) so that EPA may approve an ozone redesignation request

notwithstanding the lack of a fully approved conformity SIP. The rationale for this is based on a combination of two factors. First, Federal conformity rules require performance of conformity analysis even in the absence of Federally approved states rules. Second, conformity provisions of the CAA continue to apply after redesignation because areas are subject to a maintenance plan which requires compliance with mobile budgets. 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 approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request.

Virginia submitted procedures to determine if systems-level highway plans and other Federally-financed projects are in conformity with air quality plans ("transportation conformity") to EPA on January 20, 1997 and were deemed complete by operation. The EPA has not yet taken action on this submittal. In the meantime, EPA is in the process of incorporating these changes to the state regulation. Pending EPA approval of the state regulation, Virginia will continue to make transportation conformity determinations under the provision of 40 CFR part 93, subpart A.

The Fredericksburg Area Metropolitan Planning Organization (FAMPO) along with the Virginia Department of Motor Vehicles (DMV) provided 2002 mobile source input parameters for the development of all future year inventories. As part of the SIP process, the recently submitted maintenance plan will establish an emission budget to be used for transportation conformity purposes. This mobile source emissions budget represents the level of mobile emissions that can be emitted in the

area while supporting the air quality plan.

### *E. Maintenance Plan for the Fredericksburg Nonattainment Area*

#### 1. Maintenance Plan Requirements

A maintenance plan is a SIP revision that provides maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. A maintenance plan consists of the following requirements as outlined in section 175A of the CAA: (a) An attainment inventory; (b) a maintenance demonstration; (c) a monitoring network; (d) verification of continued attainment; and, (e) a contingency plan.

*a. Attainment Inventory.* An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. VADEQ determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the three-year block of 2002–2004 as a baseline and accounts for reductions attributed to implementation of the CAA requirements to date. This inventory is based on actual emission for a "typical summer day" and consist of a list of sources and their associated emissions.

*b. Maintenance Demonstration.* VADEQ's calculations of future emissions of VOC and NO<sub>x</sub> from stationary and mobile sources demonstrate that future emissions will not exceed the level of Virginia's attainment inventory for a 10-year period following redesignation (see Tables 1 and 2). Future emissions levels must continue to remain at or below attainment levels for a period of 10 years after EPA redesignates the area from nonattainment to attainment. The VADEQ's planning horizon for the maintenance plan is 2015.

TABLE 1.—TOTAL VOC EMISSIONS FOR 2004–2015

Source category	2004 NO <sub>x</sub> emissions (tpd)	2015 NO <sub>x</sub> emissions (tpd)
Mobile <sup>1</sup> .....	11.298	5.734
Nonroad .....	3.304	2.231
Area <sup>2</sup> .....	14.070	15.303
Point .....	0.602	0.7824
Total .....	29.274	24.0504

<sup>1</sup> Includes transportation conformity provisions.

<sup>2</sup> Includes vehicle refueling emissions and the benefits of selected local controls (Stage I, CTG RACT, and open burning).

<sup>3</sup> Includes selected local controls (open burning).

TABLE 2.—TOTAL NO<sub>x</sub> EMISSIONS FOR 2004–2015

Source category	2004 NO <sub>x</sub> emissions (tpd)	2015 NO <sub>x</sub> emissions (tpd)
Mobile <sup>1</sup> .....	19.742	7.326
Nonroad .....	3.601	2.195
Area <sup>3</sup> .....	3.465	4.742
Point .....	0.179	0.0258
Total .....	26.987	14.2888

<sup>1</sup> Includes transportation conformity provisions.

<sup>2</sup> Includes vehicle refueling emissions and the benefits of selected local controls (Stage I, CTG RACT, and open burning).

<sup>3</sup> Includes selected local controls (open burning).

*c. Monitoring Network.* VADEQ will continue to operate its current air quality monitor in accordance with 40 CFR 58. Should measured mobile source parameters change significantly over time, the Commonwealth will perform a saturation monitoring study to determine the need for, and location of, additional permanent monitors.

*d. Verification of Continued Attainment.* The Commonwealth of Virginia has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Key regulatory requirements that VADEQ will keep in place to maintain attainment include expanding CTG RACT, Stage I controls, and open burning restrictions to the City of Fredericksburg and Spotsylvania County.

Virginia will track the progress of the maintenance demonstration by periodically updating the emissions inventory. This tracking will consist of annual and periodic evaluations. The annual evaluation will consist of checks on key emissions trend indicators such as the annual emissions update of stationary sources, the Highway Performance Monitoring System (HPMS) vehicle miles traveled data reported to the Federal Highway Administration, and other growth indicators. These indicators will be compared to the growth assumptions used in the plan to determine if the predicted versus the observed growth remains relatively constant. The State will also develop and submit to EPA comprehensive tracking inventories every three years during the maintenance plan period, beginning in 2005. For purpose of performing this tracking function for point sources, the Commonwealth will retain the annual emission statement requirements for the maintenance area (9 VAC 5–20–160). Virginia will report the results of this tracking program to EPA every three years.

*e. Contingency Measures.* According to the CAA, states that wish to

redesignate nonattainment areas to attainment must include in their submittal to EPA contingency measures which will automatically take effect should violations of the NAAQS occur in the former nonattainment area. Contingency plan measures to be considered for implementation of Fredericksburg Nonattainment Area for VOC and NO<sub>x</sub> emissions above the regional emissions budget or two recorded ozone exceedances include the preparation of a complete VOC and NO<sub>x</sub> emission inventory (for exceeding the regional emissions budget scenario only) and the implementation of one or more regulations concerning area source VOC controls. These control measures consist of 9 VAC 5 Chapter 40, Article 42 Emission Standards for Portable Fuel Container Spillage; 9 VAC 5 Chapter 40, Article 48 Emission Standards for Mobile Equipment Repair and Refinishing Operations; 9 VAC 5 Chapter 40, Article 49 Emission Standards for Architectural and Industrial Maintenance Coatings; and 9 VAC 5 Chapter 40, Article 50 Emission Standards for Consumer Products.

In the event that an ozone violation occurs at the Stafford County monitor, the remaining area source VOC controls will be implemented. In the event that a violation of the ozone standard occurs following the implementation of VOC controls, and in any subsequent ozone season, NO<sub>x</sub> and VOC RACT will be implemented for sources emitting above 100 tpy that are located in Spotsylvania and Fredericksburg.

Regardless of the number of exceedances or violations noted, the regulations controlling VOC emissions from area sources (9 VAC 5 Chapter 40, Article 42; 9 VAC 5 Chapter 40, Article 48; 9 VAC 5 Chapter 40, Article 49; and 9 VAC 5 Chapter 40, Article 50) will be expanded to Fredericksburg and Spotsylvania County such that these regulations will take effect in 2008, or as expeditiously as possible thereafter in order to provide additional air quality benefits.

## 2. Requirement for Continued Maintenance

Section 175A(b) of the CAA will also require The Commonwealth of Virginia to submit a revision to the SIP eight years after the original redesignation request is approved to provide for maintenance of the NAAQS in the Fredericksburg Nonattainment Area for an additional 10 years following the first 10-year period.

## III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or

environment; or (4) that are required by law.

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

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

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

#### IV. Proposed Action

The EPA is proposing to approve the Commonwealth of Virginia's May 2, 2005 request for the Fredericksburg ozone nonattainment area to attainment of the eight-hour NAAQS for ozone because the requirements for approval have been satisfied. EPA is also proposing to approve the associated maintenance plan for this area as required under 175A of the CAA, as a revision to the Virginia SIP, which was submitted on May 4, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve 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 proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule proposing to approve the redesignation of the Fredericksburg Ozone Nonattainment Area to attainment and to approve the associated maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Air pollution control, National Parks, Wilderness Areas.

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

Dated: September 1, 2005.

**Richard J. Kampf,**

*Acting Regional Administrator, Region III.*

[FR Doc. 05-17928 Filed 9-9-05; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 372**

[TRI-2005-0004; FRL-7532-7]

RIN 2025-AA17

**Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting; Notice of Data Availability; Extension of Comment Period**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule, notice of data availability, extension of comment period.

**SUMMARY:** On June 14, 2005, EPA issued a notice of data availability concerning a proposed rule to add a diisononyl phthalate (DINP) category to the list of toxic chemicals subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). The notice of data availability made available for public comment a revised hazard assessment for DINP. The purpose of this action is to inform interested parties that, in response to a request for an extension, EPA is extending the comment period by 30 days until October 12, 2005. The comment period for the notice of data availability was previously scheduled to close on September 12, 2005.

**DATES:** Comments must be received on or before October 12, 2005.

**ADDRESSES:** Submit your comments, identified by Docket ID No. TRI-2005-0004, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [oei.docket@epa.gov](mailto:oei.docket@epa.gov).
- Mail: Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. TRI-2005-0004.
- Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, telephone: 202-566-1744, Attention Docket ID No. TRI-2005-0004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0741; e-mail: [bushman.daniel@epamail.epa.gov](mailto:bushman.daniel@epamail.epa.gov), for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1-800-424-9346, in Virginia and Alaska: 703-412-9810 or Toll free TDD: 1-800-553-7672.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Notice Apply to Me?*

You may be potentially affected by this notice if you manufacture, process, or otherwise use DINP. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry .....	SIC major group codes 10 (except 1011, 1081, and 1094); 12 (except 1241); or 20 through 39; or industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C., section 6921 <i>et seq.</i> ); or 5169; or 5171; or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government .....	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address only, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OEI Document Control Officer, Mail Code: 2822T, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, 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 CBI). The EPA will disclose information claimed as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

## II. Background Information

### *A. What Does This Notice Do and What Action Does This Notice Affect?*

This notice extends the comment period for EPA's June 14, 2005 notice of data availability concerning the proposed rule to add a DINP category to the EPCRA section 313 list of toxic chemicals (70 FR 34437).

### *B. Why and for How Long Is EPA Extending the Comment Period?*

EPA received a request from the public for a 30-day extension of the comment period for the June 14, 2005 DINP notice of data availability. The request was for additional time to review relevant information and prepare comments on the revised DINP hazard assessment that was made available for public comment in the notice of data availability. EPA considered the request and determined that extending the comment period is an appropriate action. Therefore, EPA is extending the comment period on the June 14, 2005 notice of data availability by 30 days until October 12, 2005. All comments should be submitted following the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section of this document. All comments must be received by October 12, 2005.

### List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: September 6, 2005.

**Kimberly T. Nelson,**

*Assistant Administrator for Office of Environmental Information.*

[FR Doc. 05-18090 Filed 9-9-05; 8:45 am]

**BILLING CODE 6560-50-P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 2004-19239]

RIN 2127-AG41

#### Federal Motor Vehicle Safety Standards; Rearview Mirrors

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** In response to a petition for rulemaking, this document proposes to require straight trucks with a gross vehicle weight rating (GVWR) of between 4,536 kilograms (10,000 pounds) and 11,793 kilograms (26,000 pounds) to be equipped with a rear object detection system. The purpose of the proposed requirement is to alert drivers to persons and objects directly behind the vehicle, thereby reducing backing-related deaths and injuries. This notice proposes two compliance options. Vehicle manufacturers could satisfy the proposed requirement either by installing a mirror system or rear video system that would make the area to the rear of the vehicle visible to the driver. The notice also asks a series of questions to help the agency determine whether the proposed requirements should be extended to vehicles in other weight classes and whether existing straight trucks engaged in interstate commerce should be retrofitted to meet the proposed requirements, as part of a future rulemaking.

**DATES:** Comments must be received on or before November 14, 2005.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number above by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- 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.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or

comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Dr. Keith Brewer, Office of Crash Avoidance Standards (NVS-121), NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202-366-5280) (FAX: 202-366-4329).

For legal issues, you may contact Mr. Eric Stas, Office of the Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202-366-2992) (FAX: 202-366-3820).

**SUPPLEMENTARY INFORMATION:**

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**I. Executive Summary**

In response to a petition for rulemaking, the National Highway Traffic Safety Administration (NHTSA) is proposing to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 111, *Rearview Mirrors*, to require a rear object detection system on straight trucks<sup>1</sup> with a GVWR of between 4,536 kilograms (kg) (10,000 pounds) and 11,793 kg (26,000 pounds). Most of these vehicles have a significant blind spot in the rear. The purpose of the proposed requirement is to provide a uniform standard that would alert

<sup>1</sup> A "straight truck" is a single-unit truck composed of an undetachable cab and body. Body types routinely incorporated as part of straight trucks include an enclosed box, flat bed, dump bed, bulk container, or special purpose equipment.

drivers of persons and objects directly behind the vehicle and to thereby reduce backing-related deaths and injuries. Children, the elderly, and persons with impaired senses are target populations of particular concern in backing-related incidents.

NHTSA is proposing a regulation at this time for a number of reasons. First, agency research has demonstrated that straight trucks have a disproportionately higher back-up fatality rate than other vehicle types. Research indicates that backing straight trucks annually cause at least 79 fatalities (both on-road and off-road) and 148 injuries. The incidence rate for straight truck backing fatalities is 21.89 per 100 billion vehicle miles traveled and 29.68 per million registered vehicles, figures 8 to 17 times greater than for passenger vehicles.

Second, technologies currently exist that could make a substantial area directly behind such trucks visible to the driver. Elimination of this blind spot could significantly mitigate the backing problem associated with these vehicles. Further, because individual States have begun to regulate in this area, NHTSA believes it is appropriate to develop a uniform set of requirements for rear object detection.

In developing a proposed performance standard for rear object detection, NHTSA carefully considered a range of technologies. NHTSA examined both visual systems (e.g., cross-view mirrors and video cameras) and non-visual systems (e.g., sonar/infrared devices and audible back-up alarms) in order to evaluate their efficacy in preventing backing-related injuries and fatalities.

We believe primary responsibility for object detection should be placed upon the driver, such that the driver has visible confirmation that the pathway is clear before backing; non-visual systems, by their nature, cannot provide such confirmation. Consequently, we are proposing two compliance options that would provide a visual image to the driver of a 3 meter (m) by 3 m area immediately behind the vehicle. We propose that the following requirements would become effective for covered vehicles that are manufactured one year after publication of a final rule.

*Option 1: Cross-View Mirrors*

Under the first proposed compliance option, a cross-view mirror system would be required. A cross-view mirror is typically a convex mirror mounted on the driver's side, upper rear corner of a vehicle that is used in conjunction with the driver's side exterior rearview mirror to view the area directly behind a vehicle.

The cross-view mirror would be required to: (1) Have no discontinuities in the slope of its surface; (2) be adjustable both in the horizontal and vertical directions; (3) be installed on stable supports on the upper rear corner of the driver's side of the vehicle; (4) have an average radius of curvature of no less than 203 millimeters (mm), and (5) be placed such that the geometric centers of the two mirrors would be separated by no more than 5 m.

We also are proposing test requirements to ensure that the mirror system provides a detection zone that would permit the driver to survey the area behind the vehicle for obstacles before backing. The proposed test requirements would be similar in nature to the school bus mirror test requirements of FMVSS No. 111, which utilize a number of cylinders to simulate objects that would be difficult or impossible to see without the aid of mirrors.

*Option 2: Rear Video Systems*

Under the second proposed compliance option, a rear video system would be required that provides the same 3 m by 3 m field of view as in Option 1. To maximize its effectiveness, the system's monitor would be required to be mounted as close to the centerline of the vehicle as practicable near the top of the windshield and have an image size of between 90 cm<sup>2</sup> and 160 cm<sup>2</sup>. The video camera would be required to be adjustable so that it may tilt in both the horizontal and vertical directions, for aiming purposes, and the video monitor similarly would be required to be adjustable so as to accommodate drivers of different statures.

The proposed test procedures, designed to ensure compliance with the rear video system's detection zone requirement, would be essentially the same as those for the cross-view mirrors compliance option.

Although we do not believe that non-visual systems alone would achieve our safety objectives related to rear object detection, we intend neither to require nor to prohibit the voluntary installation of such systems by manufacturers.

Finally, although we are not proposing to do so at this time, NHTSA is requesting comments as to whether, in the interests of safety, the proposed requirements should be extended to vehicles in other weight classes and whether existing commercial vehicles in the designated weight class should be required to be retrofitted with rear object detection systems that would comply with the new standard.

The agency estimates that requiring a visual rear detection system would

result annually in a net reduction of 23 fatalities, 43 injuries, and an estimated \$32 million in property damage savings (present discounted value). The associated cost burden is estimated to be approximately \$77 million annually (in 2004 economics).

## II. Background

### A. Petition for Rulemaking

In March 1995, Mr. Dee Norton submitted a petition for rulemaking to the agency seeking to amend FMVSS No. 111 to require convex, cross-view mirrors on the rear of the cargo box of stepvans and walk-in style delivery and service trucks. The petition was intended to prevent future tragedies similar to one that befell Mr. Norton's grandson, who was killed when he was struck and backed over by a delivery truck in an apartment complex parking lot because the driver was unable to see the area directly behind the vehicle in its side-mounted rearview mirrors.

In determining whether to grant the petition and deciding how to substantively respond, NHTSA decided to solicit comment from the public. To this end, NHTSA issued a request for comments, which was later followed by an Advanced Notice of Proposed Rulemaking (ANPRM).

### B. Request for Comments

NHTSA published a notice in the **Federal Register** on June 17, 1996, seeking information on cross-view mirrors and other alternative rear object detection systems (61 FR 30586).<sup>2</sup> We received six comments in response to that notice.

Commenters described a variety of available rear object detection devices, including both visual and non-visual systems. Visual systems include not only cross-view mirrors, but also video cameras mounted on the rear of the vehicle that are connected to a monitor in the occupant compartment. Existing non-visual systems include ultrasound, radar, microwave, and infrared sensor mechanisms, which detect an object and provide an auditory signal to the driver that an obstruction is behind the vehicle, as well as audible alarms that sound whenever a vehicle is backing. These comments provided initial insights that helped NHTSA to direct the course of the rulemaking process.

<sup>2</sup> This Request for Comments and the comments subsequently received are available in hard copy in Docket No. NHTSA-96-53. However, for ease of reference, the Request for Comments also has been included in the electronic docket for the present rulemaking (Docket No. NHTSA-2000-7967-25).

### C. Advanced Notice of Proposed Rulemaking

NHTSA issued an ANPRM on November 27, 2000, to gather further data on key issues related to rear object detection (65 FR 70681).<sup>3</sup> In addition to a request for general comments, the ANPRM posed twenty specific questions for public input, which were broken down into four main categories: (1) Questions concerning rear cross-view mirrors; (2) questions concerning rear video systems; (3) questions concerning other rear object detection systems, and (4) other questions. Generally, the cross-view mirror questions concerned the size, design, and placement of mirrors, the size of the detection area behind the vehicle, the use and capabilities of exterior, audible back-up alarms (as an alternative to mirrors), and test procedures. The rear video systems questions sought input regarding image size, display color, screen size and location, need for a system failure alert, possible conflicts with State laws against video screens/monitors in view of the driver, and test procedures.

The questions pertaining to other rear object detection systems asked about the capabilities and limitations of these non-visual systems, including efforts to increase the range of sensors so that they are effective at higher backing speeds. These questions also raised the issue of how to craft test procedures that would ensure the accuracy and reliability of non-visual systems under a variety of environmental conditions. The "other" category of questions asked whether manufacturers who have installed rear visibility systems have experienced significant property damage prevention benefits, whether this area should be regulated by the Federal government or the States, whether and how subcategories of vehicles should be defined, and whether existing commercial trucks in the applicable weight range should be required to be retrofitted with rear object detection systems.

### D. Comments on the ANPRM

NHTSA received fourteen comments in response to the ANPRM, including submissions from trade associations, automobile and rear object detection system manufacturers, fleet operators, organized labor, a State agency, and individuals.<sup>4</sup> In addition to responding

<sup>3</sup> Docket No. NHTSA-2000-7967-1.

<sup>4</sup> Comments were received from: (1) The National Private Truck Council (NPTC); (2) the American Trucking Associations (ATA); (3) the Towing and Recovery Association of America (TRAA); (4) the National Truck Equipment Association (NTEA); (5)

to the questions posed in the ANPRM, commenters also raised a variety of issues, including scope of the regulatory requirement, potential exclusions, alternatives to regulation, maintenance and training requirements, and preemption. The following discussion summarizes the comments received on the ANPRM.

### Scope and Exclusions

NHTSA received a range of views regarding the scope of a regulation for rear object detection systems. Several commenters advocated narrowing coverage due to purported unsuitability of or lack of necessity for such systems on certain vehicles. For example, ATA stated that a "one-size-fits-all" approach would not be successful, because there is too much diversity in equipment and operations. NTEA stated that the rear object detection standard should only apply to "standard type vehicles."

Commenters also offered numerous suggestions for vehicles which they believe should be excluded from the requirements of an amended standard, including tow trucks, car carriers, flat beds, stake trucks, dump trucks, tradesmen's and mechanic's bodies, platform bodies, tank trucks, any vehicle equipped with a crane or aerial device operating in a rotational manner, and other special units.

Other commenters, such as NYDOT, urged NHTSA to expand coverage of the standard to include lighter vehicles commonly used in residential deliveries (e.g., trucks with a GVWR of 6,500 lbs. to 16,000 lbs.). NATC suggested that other vehicles with large blind spots (e.g., windowless vans and light trucks with campers or canopy shells) may also be suitable for coverage under a revised FMVSS No. 111. These recommended changes could bring some passenger vehicles within the ambit of the rule. NYDOT suggested consideration of a phase-in period to permit earlier implementation of requirements for trucks that can readily be equipped with existing technology.

In response to the questions about retrofitting, commenters expressed divergent views. NYDOT urged NHTSA to take the lead on retrofitting of existing vehicles so that there would not be a patchwork of remedial activities by the 50 States. Others, such as ABC,

Ford Motor Company (Ford); (6) Sheffield Partners LLC (Sheffield); (7) Rostra Precision Controls, Inc. (Rostra); (8) Reliant Energy (Reliant); (9) ABC Supply Co., Inc. (ABC); (10) Federal Express Corporation (FedEx); (11) the International Brotherhood of Teamsters (Teamsters); (12) the New York Department of Transportation (NYDOT); (13) the Nevada Automotive Test Center (NATC); and (14) Ronald G. Silc. These comments can be found in Docket No. NHTSA-2000-7967.

opposed retrofitting, stating that retrofitting its entire fleet would be a "very lengthy and costly operation."

#### Rearview Mirrors

Regarding rearview mirrors, the commenters generally agreed with NHTSA's tentative determination that cross-view mirrors should be placed no more than 5 meters (approximately 16 feet) from the driver's side rear view mirror, as the image size arguably becomes too small beyond this distance to be useful to the driver. However, ATA urged greater clarity in how NHTSA would measure the distance between the two mirrors.

Commenters also discussed the issue of trucks that are particularly long or high, thereby posing greater challenges in terms of rear object detection. For example, FedEx expressed concerns about situations where the height of a truck is so great that a top-mounted cross-view mirror is not visible in the side mirror. NYDOT stated that some trucks approaching 11,793 kg (26,000 pounds) may exceed the length where it would be feasible to use a cross-view mirror system, but it urged the agency to maintain some alternative rear object detection requirement for such vehicles.

In the ANPRM, we requested comments on whether a 3 m by 3 m detection area behind a vehicle would be adequate. Some commenters suggested alternative detection zones that would be either larger or asymmetrical, but they did not provide a strong rationale or data to support their position. However, ATA and Ford suggested that NHTSA's estimation of the backing speed used to calculate the detection zone (*i.e.*, 3 mph) underestimates actual backing speeds. These organizations stated that a reasonable estimate of backing speeds could be in the 5 mph to 8 mph range.

#### Rear Video Systems

Commenters likewise expressed a range of views on rear video systems. Some commenters, such as ABC, expressed concern about the expense of this technology. Other commenters, such as the Teamsters, specifically requested that NHTSA adopt a performance standard that would permit use of video systems.

Reliant argued that the presence of a video camera may encourage theft (presumably of the camera), but NATC made the argument that video cameras and rear mirrors may deter theft of items from the back of the vehicle when stopped.

In terms of the image presented by a rear video system, commenters suggested that an acceptable size for a

screen may be as small as 3.8 cm (1.5 inches) on the diagonal and as large as 25.4 cm (10 inches) on the diagonal. NATC stated that the size of the screen needed will depend upon the placement of the monitor relative to the driver's seating position. Reliant expressed concern about placing a video monitor in a truck's "already full" cab.

Varying views were expressed regarding screen color for rear video monitors. Mr. Silc stated that military-green monitors are more efficient than black-and-white monitors and that they provide three-times better contrast to the human eye and greater visibility. However, NATC reasoned that a black-and-white screen would be sufficient, because color would be lost in strong daylight and a black-and-white screen's contrast would be helpful in distinguishing objects and movement.

Regarding placement for the video screen, one suggestion was to have the monitor in a location similar to a car's rearview mirror, where the driver's eyes can constantly be glancing at it. NATC urged NHTSA to conduct human factors analysis to determine the optimal placement of the monitor in the truck cab.<sup>5</sup>

NHTSA received conflicting viewpoints regarding the need for a system failure alert for the rear video system. Mr. Silc stated that it is unnecessary, arguing that if the screen is black, the system is either turned off or malfunctioning, and that either situation would be easily detectable by the driver. In contrast, the Teamsters supported use of a failure alert, expressing concern that the image of the monitor must reflect in real time the area behind the truck.

In response to the ANPRM's questions about State laws regulating the existence and use of video monitors/screens in the occupant compartment which are in view of the driver, ATA stated that such restrictions are similar to those contained in Federal Motor Carrier Safety Regulation (FMCSR) 393.88. That provision specifically prohibits monitors that are in view of the driver that can receive a television signal or can be used to view video tapes. However, such prohibitions would not be applicable here, where the image presented only displays the area to the rear of the vehicle for backing purposes

<sup>5</sup> We note that NHTSA has defined and is conducting an innovative, detailed human factors analysis to understand driver requirements for indirect viewing surfaces in the cabs of heavy trucks. Related static and dynamic testing was initiated in 2004 and is expected to be completed in 2005. The results from this testing will assist the agency in defining a performance specification to be used to evaluate various indirect viewing technologies in future cab designs.

and where auxiliary video input connections are missing.

#### Audible Backup Alarms

The ANPRM asked a number of questions regarding the efficacy of audible backup alarms and whether trucks equipped with OSHA-specified alarms should be excluded from the standard's new performance requirements. Some commenters such as NATC and ATA favored exclusion of such vehicles, arguing that audible backup alarms provide an effective warning for most pedestrians. As an added benefit, commenters stated that those systems are relatively easy to maintain.

However, other commenters pointed out significant limitations associated with backup alarm systems. NYDOT stated that young children, who account for a disproportionate number of the fatalities and injuries related to backing crashes, may not understand or be able to properly respond to such alarms. Rostra stated that auditory backup alarms do not work adequately with the hearing impaired, and the Teamsters added that the elderly may also experience problems with such systems (*e.g.*, due to decreased mobility, hearing impairment). Reliant added that these alarms can be turned off and that drivers may forget to turn them on again, and it also stated that residential customers frequently complain about loud backing alarms on trucks used at night.

#### Other Non-Visual Rear Object Detection Systems

Commenters expressed a range of views about the efficacy of a variety of non-visual rear object detection systems, such as those utilizing sonar and infrared technology. The Teamsters stated that manufacturers should be permitted to use non-visual systems as well as visual systems for rear object detection. NPTC argued that additional data are required on the effectiveness of devices other than mirrors, before such non-visual systems would be suitable as compliance options. Offering yet another possible approach, Federal Express confirmed that its vehicles are equipped with sonar backing systems used in concert with cross-view mirrors.

Comments also were received regarding the timing of the alert and detection capabilities provided by non-visual systems. Rostra stated that detection time should be derived from the distance of a calibrated test object; the speed of the alert would depend upon the distance from the sensor and the vehicle's closing speed vis-à-vis the object. Ford stated that typical latency times for radar and ultrasonic systems

are approximately 250–400 milliseconds (ms), but it added that a system's alert time could be increased by relying on multiple sensors to validate that the system is detecting a "true" target. In this context, commenters again raised concerns that NHTSA's assumption of a 3 mph backing speed may be an underestimation.

Ford also stated that surface characteristics are very complex in the real world and that the reflective characteristics of irregular surfaces are infinite. Because of this inability of non-visual systems to detect all objects, Ford argued that NHTSA must specify a limited number of objectively defined obstacles for any certification test.

#### Equipment Damage

The ANPRM also asked questions about potential damage to various rear object detection systems. Some commenters, such as Reliant, argued that mirrors are high maintenance items due to breakage and theft. Others suggested that damage inflicted by dirt, mud, rocks, brush, and limbs could limit the mirrors' effectiveness. ATA stated that while rear detection systems could be damaged by vibration and shock, it believes that these systems could be designed to withstand most of these conditions.

#### Testing

In response to questions about test procedures for the potential new rear object detection provisions, commenters generally urged NHTSA to conduct testing under as many different conditions as possible under which objects would be difficult to detect. Regarding mirrors, NATC stated that test procedures should utilize objects of various sizes, colors, heights, and positions, and the organization urged NHTSA to conduct testing under rugged conditions (e.g., vibration, humidity, and extreme high and low temperatures).

For non-visual rear object detection systems, commenters stated that a well-defined and objective standard and test methodology are even more important, including specification of the size and shape of objects to be detected in such tests. Ford suggested use of the standard pole target developed by the International Organization for Standardization (ISO), which the company has used since 1996 for testing both its ultrasonic and radar systems. Furthermore, both Rostra and NATC stated their belief that environmental conditions should be specified as part of any performance test for non-visual systems under the standard. Factors such as temperature, rain, snow,

humidity, dirt, driving surfaces, submersion, and mounting surfaces were specifically mentioned as potentially affecting such systems' detection capabilities.

#### Costs and Benefits

Commenters provided varying estimates regarding the cost of cross-view mirrors, ranging from \$80–\$160 per truck (depending upon whether one or two mirrors are required). ATA stated that NHTSA should factor in the potentially frequent damage to cross-view mirrors from a variety of sources over the life of the vehicle when determining the cost of the regulation. Figures were not provided regarding the cost of rear video systems, although NATC expressed doubt regarding the availability of such systems for as little as \$200, a figure mentioned in the ANPRM.

Rostra provided some figures to put the economic costs of backing crashes in perspective, stating that back-up accidents cost U.S. drivers over \$1.3 billion per year. Sheffield qualitatively described the benefits of a rear object detection system as including reduction in equipment damage, repair costs, insurance rates, and downtime.

According to Rostra, the Insurance Institute for Highway Safety (IIHS) tested six mid-size SUVs in crashes at 5 mph and found that only two of them suffered less than \$5,000 in damages during four crash tests. Rostra stated that the cost of an object detection system is often less than the cost of the insurance deductible incurred when there is a collision. NATC suggested that the insurance industry could participate in encouraging the use of these systems through monetary incentives (presumably a reduction in premiums).

#### Federal vs. State Regulation

The ANPRM asked whether it would be better to allow States to address the safety problem associated with backing trucks, because the States routinely regulate vehicles in use and regulate by type of use. ABC argued that due to frequent and regular interstate movement of truck traffic, requirements for rear detection systems should be addressed at the Federal level, asserting that a patchwork of differing individual State standards would render compliance extremely difficult.

#### Need for a Requirement

There were differences of opinion among the commenters as to the need to amend FMVSS No. 111 to set a requirement for rear object detection. Some commenters, such as Reliant, NATC, and the Teamsters, expressed

support for a performance standard for backing vehicles, although there was not any consensus regarding the best approach for such standard (e.g., suggestions provided for various technologies or driver-based backing programs). Other commenters, such as NPTC, ATA, and FedEx opposed a federal requirement for rear object detection, recommending instead that NHTSA support voluntary programs that leave improvements to the discretion of the fleet operators.

#### Training and Recordkeeping

Several commenters raised the issue of driver back-up training, either as a supplement to or substitute for rear object detection systems under the standard. The Teamsters recommended a requirement for employers to develop and implement procedures for drivers to follow in the event that rear object detection technology fails or is damaged, and they also supported required maintenance and recordkeeping for the system. ATA favored voluntary training (and possible operations restrictions) for drivers as the remedy for backing problems, stating that without appropriate training, drivers simply ignore rear object detection systems and their images.

#### FMCSA Regulations/Funding

NYDOT expressed concern that if NHTSA amends FMVSS No. 111, FMCSA would deem State requirements for cross-view mirrors or other rear object detection devices to be a burden on interstate commerce that would create a breach of the conditions for States to receive Motor Carrier Safety Assistance Program (MCSAP) funding. For example, New York State's earlier proposed legislation related to rear object detection was vetoed by the Governor because it was determined to be incompatible with a FMCSA regulation, thereby jeopardizing millions of dollars of FMCSA grants.

NYDOT stated that if NHTSA cannot persuade FMCSA to change its regulations, NHTSA should specify parameters for State action so that States may avoid loss of MCSAP funding. Several commenters stated that NHTSA should clearly articulate whether and to what extent a revised FMVSS No. 111 preempts State requirements related to rear object detection.

NTEA commented that if NHTSA does proceed with a rulemaking for rear object detection, it should convince the FMCSA to issue a regulation requiring vehicle owners to properly maintain the system when the vehicle is in use. Otherwise, NTEA argues, the standard alone would have little effect,

particularly in light of the potential for damage and misalignment.

### III. Size of the Safety Problem

#### A. Number of Injuries and Fatalities

In order to determine an appropriate regulatory response, NHTSA undertook an analysis designed to ascertain the size of the backing problem by gathering data on the annual number of incidents of people being backed over by a motor vehicle of any size or type, both on-road and off-road (e.g., in parking lots, driveways). The data were then analyzed further to determine, to the extent possible, the number of incidents attributable to straight trucks.

Since the time of the ANPRM, our analysis has been refined to incorporate additional data. NHTSA analyzed 1999 Fatality Analysis Reporting System (FARS) data, 2000–2001 National Electronic Injury Surveillance System (NEISS) data, and 1995–1999 General Estimates System (GES) data. Generally, we found that backing injuries and fatalities remain a matter of ongoing concern, despite changes in the vehicle population and technology.

The following are the highlights of our findings regarding injuries and fatalities associated with backing of straight trucks. Data suggest that straight trucks involved in backing incidents result annually in an estimated 79 fatalities. This figure represents 13 on-road fatalities and an estimated 66 off-road fatalities. In addition, data suggest that there are annually about 148 injuries attributable to backing straight trucks. We believe that these figures provide a conservative estimate of the problem, because many workplace incidents, a potentially significant source of backing injuries and fatalities, may go unreported.

A more detailed summary of our findings is provided below, including the details and methodology related to the above statistics. However, for a more complete discussion of the fatality and injury data related to this proposal, please consult the Preliminary Regulatory Evaluation (PRE) that has been placed in the docket for this rulemaking.

#### 1. Fatality Data

To obtain a general understanding of fatalities associated with backing vehicles at the time of the ANPRM, the agency gathered data on the annual number of incidents of people being backed over by a motor vehicle of any type or size. (Fatality and injuries specifically attributable to straight trucks are discussed subsequently.) To this end, we initially reviewed FARS

data for 1991 to 1997. The FARS data system contains information on all fatal traffic crashes within the 50 States, the District of Columbia, and Puerto Rico. This search found a total of 381 backing fatalities for all vehicle types over this time period, or approximately 54 fatalities per year. To verify the accuracy of the 1991 to 1997 data, the agency later analyzed 1999 FARS data, which revealed 58 backing fatalities.

However, by design, a fatality is included in the FARS database only if a motor vehicle is involved in a crash while traveling on a roadway customarily open to the public. Thus, FARS excludes other likely scenarios for backing fatalities, such as events where someone is backed over in a driveway, parking lot, or in a workplace such as a warehouse or construction site.

We believe it is also important to consider off-road fatalities because on-road fatalities only represent a part of the problem in terms of backing-related incidents. Moreover, we believe that off-road backing fatalities represent a significant portion of the total fatalities that the agency is seeking to address under this rulemaking and should not be excluded.

To ascertain the number of off-road backing fatalities, the agency worked with the National Center for Health Statistics (NCHS) to gather data on these incidents. NCHS and NHTSA initiated a study utilizing 1998 death certificates in order to confirm the agency's information regarding the frequency of backing-related fatalities. The report is based on 4,046 death certificates out of an estimated 5,500 cases from 1998, sampled from 35 states and the District of Columbia. As of May of 2004, the death certificate study is complete and available in the agency's public docket (Docket Number NHTSA–2000–7967–22). This study reported 91 fatalities occurring in 1998 due to backing vehicles (15 on-road and 76 off-road fatalities). Although the fatality data from the joint NCHS–NHTSA study do not represent a national value nor can they be extrapolated to one, we have assumed that the percent distribution between on- and off-road backing fatalities is representative of what is currently occurring nationally (i.e., 16.48% on-road fatalities and 83.52% off-road fatalities). Based upon that assumption, we applied the on-road/off-road percentage distribution from the death certificate study to the national sample represented by the FARS data, from which we estimate that annually, there are 276 off-road backing fatalities.

#### 2. Injury Data

In addition to fatality data, NHTSA conducted an inquiry into the number of non-fatal injuries associated with backing crashes. This analysis relied upon information drawn from the National Electronic Injury Surveillance System (NEISS) and GES databases. However, because these two databases overlap, it is not possible to sum the results to directly determine an annual total of such injuries. Nevertheless, the available information demonstrates that there are a significant number of non-motorist injuries that are attributable to backing vehicles.

The NEISS database, the first source of injury data considered, is a statistically valid injury surveillance and follow-back system that has been operated by the Consumer Product Safety Commission (CPSC) for nearly thirty years. The system's primary purpose has been to provide timely data on consumer product-related injuries occurring in the U.S. NEISS injury data are gathered from the emergency departments of 100 hospitals selected as a probability sample of the more than 5,300 U.S. hospitals with emergency departments. Surveillance data enable CPSC analysts to generate national estimates of the number of injuries.

During the course of this rulemaking, NHTSA funded a study of the July–December 2000 NEISS file, which showed 64 cases in which a pedestrian or a pedalcyclist was injured by a backing vehicle. These are the first relevant data available since the NEISS was expanded to include injuries sustained in motor vehicle crashes. This data sample translates into a six-month national estimate of 3,556 injuries. To determine whether this number may be summed for an annual estimate, we also examined the January–June 2001 NEISS file. The 2001 file showed 75 cases where a non-motorist was injured by a backing vehicle, which translates into an estimated 3,863 national injuries over that six-month period. Because there is only a small difference between the estimates, we believe that the rate of non-motorist backing injuries is fairly constant over the course of the year. Therefore, summing the two injury figures for the six-month periods, we estimate 7,419 annual injuries to non-motorists are attributable to backing injuries. The GES injury data will be discussed subsequently, in the context of the data related specifically to straight trucks.

#### 3. Workplace Data

We are also concerned about backing-related injuries and fatalities that may

occur at the workplace, which may not be captured in other databases for various reasons. Consequently, we examined the Occupational Safety and Health Administration's (OSHA) Web site, which documents at least 15 fatalities with the cause listed as being crushed between a backing vehicle and a loading dock. The OSHA Web site also includes over 50 reports of workers being killed by backing vehicles.<sup>6</sup> OSHA has not performed a study to catalog all backing-related fatalities in the workplace, so it is not possible to definitively characterize the extent of the problem in the workplace environment. However, the anecdotal data assembled by OSHA document the existence and nature of a safety concern.

Another area of concern is construction sites. Under 29 CFR Part 1926, *Health and Safety Regulations for Construction*, OSHA has issued requirements for back-up alarms on vehicles and equipment used in construction in order to address the issue of backing injuries/fatalities, unless someone is standing to the rear to direct the backing vehicle. However, OSHA was unable to provide any statistical data regarding the effectiveness of the required systems.

Many backing crashes that occur in the workplace may go unreported to police, because they are handled privately by the businesses involved. In those cases, important incidence data may fail to be included in the FARS or NCHS databases, so the statistics generated from those sources may underestimate the actual backing problem. NHTSA would be interested in additional information on the backing crashes encountered in the workplace.

As further indication of a backing problem, we are aware that several major employers with extensive truck fleets have begun equipping their vehicles with rear object detection systems, although we do not have firm figures regarding implementation on a national scale. For example, United Parcel Service (UPS) installed video monitoring systems on its entire fleet of 65,000 delivery trucks by October 2001. Similarly, the United States Postal Service (USPS) and Potomac Electric Power Company (PEPCO) have equipped their vehicles with cross-view mirrors, and FedEx has installed both cross-view mirrors and sonar-based rear object detection systems on its vehicles. Further, NHTSA has learned that some trucks equipped with rear video systems

also come with an audio feed, which place a microphone near the rear of a vehicle that is connected to a speaker near the driver. Such audio feed would allow an unnoticed person in the path of a backing vehicle to yell to alert the driver as to that person's presence. While these companies were undoubtedly concerned with backing crashes that occur on public and private roads, we understand that prevention of injuries and fatalities in loading and docking areas of worksites was also a factor in adopting such equipment.

#### B. Vehicle Type Involvement in Backing Crashes

NHTSA has conducted research to determine the rate of involvement of specific types of vehicles in pedestrian and pedalcyclist backing fatalities, both on-road and off-road. As discussed below, NHTSA found that straight trucks are involved in a disproportionately high number of backing crashes resulting in pedestrian and pedalcyclist fatalities.

For on-road incidents, the FARS data showed the following vehicle-type involvement for 1991–1997 pedestrian and pedalcyclist backing fatalities:

TABLE 1.—CUMULATIVE NUMBER OF PEDESTRIAN AND PEDALCYCLIST FATALITIES IN ON-ROAD BACKING CRASHES (FARS DATA FROM 1991–1997)

Vehicle type	Number of fatalities
Passenger car .....	129
Light truck/van .....	139
Bus .....	1
Straight truck over 4,536 kg GVWR .....	81
Unknown truck over 4,536 kg GVWR .....	12
Combination truck .....	15
Other .....	2
Unknown .....	2
<b>Total .....</b>	<b>381</b>

Based on the above FARS data, after distributing unknowns, we estimate straight trucks were involved in 92 on-road backing fatalities over the 7 year period, resulting in 13 fatalities per year. Thus, straight trucks were accountable for approximately 24% of the on-road backing fatalities during that period.

Again, attributing the same percentage of backing incidents for straight trucks that occur on-road as occur off-road (as reflected in Table 1) yields 66 annual off-road fatalities ( $0.24 \times 276$ ). Summation of the on-road and off-road

fatalities yields 79 annual fatalities attributable to backing straight trucks.

Turning to the injury data specific to straight trucks, we examined the data from the GES, which include only injuries incurred in police-reported incidents. GES data overlap the previously discussed NEISS data, which record both police-reported incidents as well as unreported incidents. Therefore, the GES data on backing-related injury crashes are probably not representative of all backing-related injury crashes, because the data do not include information about injuries from backing

maneuvers in private areas such as driveways, parking lots, and work sites.

Nevertheless, the GES data are useful for other reasons. First, the GES data break down accidents by both vehicle type and maneuver, so it is possible to determine the percentage of non-fatal backing injuries attributable to straight trucks (approximately two percent). We expect that the percentage of backing injuries for straight trucks would not change significantly from year to year. Further, we believe that the proportion of backing injuries attributable to straight trucks in the GES data and the NEISS data are comparable, so

<sup>6</sup> These cases were identified by searching OSHA's Accident Investigation Search database and

by entering appropriate key words. See <http://www.osha.gov/cgi-bin/inv/invl>.

extrapolating to the larger NEISS database, the number of backing injuries attributable to straight trucks would translate into approximately 148 injuries per year (*i.e.*, two percent of the 7,419 total injuries).

The Preliminary Regulatory Evaluation accompanying this notice estimates the severity of these injuries attributable to backing straight trucks, based upon the Abbreviated Injury Scale (AIS). AIS is an anatomically-based system that classifies individual injuries by body region on a six-point ordinal scale of risk to life, with the MAIS score

being the maximum injury level(s) an individual receives.<sup>7</sup> According to the PRE, of the anticipated annual backing injuries, there are expected to be 120 MAIS-1 injuries, 19 MAIS-2 injuries, 7 MAIS-3 injuries, and 1 MAIS-4 injury (difference of 1 injury due to rounding). Please consult the PRE for a more complete discussion of backing injury severity levels (*see* Chapter III).

However, we believe that the figures for cumulative number of backing crashes and the absolute number of fatalities do not provide a complete picture of the problem. Instead, one

must consider the relative risk posed by different types of vehicles. We have used the number of vehicles in the fleet and the miles driven to calculate the rate of backing deaths for different vehicle types. This calculation was based upon estimates of registered vehicles and vehicle miles traveled information. As demonstrated in Table 2 below, straight trucks are significantly overrepresented in backing crashes resulting in pedestrian and pedalcyclist fatalities.<sup>8</sup>

TABLE 2.—RATE OF ON-ROAD FATAL BACKING CRASHES (CUMULATIVE FARS DATA FROM 1991–1997)

Vehicle type	Pedestrians and pedalcyclists killed by a backing vehicle per million registered vehicles	Pedestrians and pedalcyclists killed by a backing vehicle per 100 billion vehicle miles traveled
Passenger cars .....	1.05	1.26
Light trucks/vans .....	2.32	2.80
Combination trucks .....	9.94	2.21
Straight trucks over 4,356 kg GVWR .....	29.68	21.89

Table 2 provides the rate of pedestrians and pedalcyclists killed by straight trucks while backing is 21.89 per 100 billion vehicle miles traveled, and 29.68 per million registered vehicles. This risk is significantly higher than that for passenger vehicles (*i.e.*, combining categories of passenger cars and light trucks/vans). Based upon this analysis, straight trucks stand out as a significant risk in terms of backing incidents.

In its comments on the ANPRM, ATA expressed disagreement with the agency’s assessment of the size of the backing problem, arguing that NHTSA did not quantify accurately the relative hazard associated with each vehicle type in its risk conversion. ATA argued that considering the number of pedestrians and pedalcyclists killed by a backing vehicle per million registered vehicles “will certainly overstate the rate for straight and combination trucks relative to passenger cars and light trucks because of the fewer number of commercial vehicles” and that it does not take into account the number of backings that these vehicles perform. For the same reasons, ATA objected to NHTSA’s analysis of the number of backing-related deaths by different vehicle types per 100 billion vehicle miles traveled.

Instead, ATA argued that it is more likely that straight trucks used for deliveries to businesses back up more as a percentage of miles driven than do passenger cars and light trucks. According to ATA, because straight trucks are typically utilized in local delivery operations and can make several deliveries per day, drivers are required to perform several backing operations per day. For this reason, ATA stated that straight trucks are likely to have a higher number of backings as a percentage of miles driven than private vehicles. Conversely, ATA argued that straight trucks used in home delivery settings, by practice, avoid backing up. This practice led ATA to believe that vehicles used in this manner are likely to have fewer backings related to miles traveled. Based upon these theories, ATA concluded that straight and combination trucks are likely to be safer relative to other types of vehicles.

We do not agree with ATA’s rationale regarding quantification of relative hazard. If it is true, as ATA argues, that straight trucks are likely to back up more often than other types of vehicles, we believe that straight trucks, based upon their vehicle type, would be expected to present a greater risk in terms of backing incidents. As a result,

we would expect that installation of a rear object detection system on straight trucks, more than on any other vehicle type, would reduce backing-related risks.

Furthermore, it is important to note that the number of pedestrians and pedalcyclists killed by straight trucks while backing, per 100 billion vehicle miles traveled, is eight to seventeen times greater than for passenger vehicles. If straight trucks used in deliveries to homes avoid backing, it is logical to assume that an inordinate amount of fatalities involve straight trucks making business deliveries. When one considers that large fleet carriers such as UPS, the U.S. Postal Service, and FedEx, have all equipped their vehicles with rear object detection systems, we are even more convinced that the remaining straight trucks are overrepresented in the data.

In addition, there is a fundamental difference between straight trucks and passenger vehicles, namely the fact that most straight trucks have a large blind spot directly behind the vehicle. Passenger vehicles, which usually have interior rearview mirrors and rear windows, generally have a more direct view of this area. Thus, passenger vehicle backing incidents are most likely to result from driver error,

<sup>7</sup> The AIS system scores injuries based upon the following levels: AIS-1 (minor injury); AIS-2 (moderate injury); AIS-3 (serious injury); AIS-4 (severe injury); AIS-5 (critical injury), and AIS-6 (maximum injury). *National Accident Sampling*

*System, 1993 Crashworthiness Data System, Injury Coding Manual*, (January 1993) (DOT HS 807 969).

<sup>8</sup> Since the time of the ANPRM, NHTSA discovered a number of minor errors in its

statistical data related to vehicle type involvement in backing crashes. These errors were corrected prior to incorporating the relevant information in this notice.

pedestrian/pedalcyclist error, or some combination thereof, problems without a clear remedy. However, in the case of straight trucks, visibility behind the vehicle is an objective problem amenable to amelioration through a regulatory requirement for a rear object detection system.

### C. Other Data and Summary

NHTSA has considered comments in response to its APRM related to the number of victims of backing crashes. NYDOT commented that New York State has recorded 14,349 backing crashes involving trucks with an enclosed or walk-in delivery bay that resulted in 35 deaths and 5,393 injuries between 1990 and 1999; these crashes also were said to have resulted in 8,921 instances of property damage.

Based upon the totality of the above information, we believe that there is a demonstrated backing problem associated with straight trucks resulting in a significant number of injuries and fatalities. These backing incidents occur on public roads, in private locations, and in workplace settings. While our existing data are most complete for on-road backing fatalities and injuries, preliminary data suggest that the problem is even greater in off-road locations, including private locations and in workplace settings.

## IV. Agency Proposal

### A. Summary of Proposal

To address the identified problem of backing-related deaths and injuries associated with straight trucks, NHTSA is proposing to amend FMVSS No. 111, *Rearview Mirrors*, to require straight trucks with a GVWR of between 4,536 kg (10,000 pounds) and 11,793 kg (26,000 pounds) to be equipped with either a cross-view mirror or rear video system in order to provide the driver with a visual image of a 3 m by 3 m area immediately behind the vehicle. However, this requirement would not apply to those trucks for which the detection area is already visible through existing mirrors already required under the standard.

The NPRM sets out proposed requirements for each of these two compliance options, as well as test procedures suitable for each option. However, in light of concerns regarding the feasibility of attaching rear object detection systems on certain types of trucks, we are requesting comments on categories of vehicles that the agency should consider excluding from the requirements of a final rule.

We propose that the requirements would be effective for new vehicles

covered under the standard that are manufactured one year or later after publication of a final rule. However, we are also seeking public comment to help determine whether requirements for a rear object detection system should be extended to vehicles in other weight classes and whether existing commercial straight trucks should be required to be retrofitted, as part of a future rulemaking.

### B. Compliance Options

In developing our proposed performance standard for rear object detection, NHTSA carefully considered a range of technologies. NHTSA examined both visual systems (e.g., cross-view mirrors and video cameras) and non-visual systems (e.g., sonar/infrared devices and audible back-up alarms) in order to evaluate their efficacy in preventing backing-related injuries and fatalities.

We believe that primary responsibility for object detection should be placed upon the driver, such that the driver has visible confirmation that the pathway is clear before backing; non-visual systems, by their nature, cannot provide such confirmation. Consequently, we are proposing two visual systems as compliance options, one for cross-view mirrors and another for rear video systems.

#### 1. Cross-View Mirrors

Under proposed Option 1, vehicle manufacturers would be required to install rear cross-view mirrors on covered vehicles so as to provide a 3 m by 3 m field of view of the area directly behind the vehicle. NHTSA's research has determined that a 3 m by 3 m area is the maximum detection zone that could be provided by a cross-view mirror system, but one which we believe would be adequate in light of the standard's safety objective.<sup>9</sup>

Selection of the proposed detection zone was based upon study results that found typical backing speeds to be 3.3 mph.<sup>10</sup> However, as discussed earlier, commenters suggested that the agency's assumptions regarding backing speed have underestimated real world experience, although data were not provided to demonstrate this point. If new data show that backing speeds have been significantly underestimated, this may necessitate extension of the proposed rearward field of view requirement. Because cross-view mirrors are not effective in providing a

field of view beyond the 3 m by 3 m zone currently proposed, a change in calculation of backing speeds may preclude adoption of this technology as a compliance option and instead result in adoption of a requirement for a video camera, a device that does not possess the same field of view limitations.

As proposed, the cross-view mirror would work in conjunction with the outside rearview mirror on the driver's side of the vehicle, and the placement of the cross-view mirror would be such that the geometric centers of the two mirrors are separated by no more than 5 m. We have tentatively decided that 5 m is the furthest distance at which the mirror system could provide a meaningful image to the driver of any object behind the vehicle, a position with which commenters generally agreed.<sup>11</sup> Longer trucks that cannot meet this requirement for maximum distance between mirrors would be required to install a video system that complies with Option 2.

Our proposal also sets out other proposed requirements which the cross-view mirror would be required to meet, including that it would be required to: (1) Have no discontinuities in the slope of its surface; (2) be adjustable both in the horizontal and vertical directions; (3) be installed on stable supports on the upper rear corner of the vehicle on the driver's side, and (4) have an average radius of curvature of no less than 203 mm as determined under paragraph S12 of existing FMVSS No. 111.

In addition, we are proposing test requirements to ensure that the detection zone specified under the proposed standard would be met. The procedures to verify compliance with these requirements are modeled in part after the existing school bus mirror test required under paragraph S13 of FMVSS No. 111, which utilizes a number of cylinders to simulate objects in front of the vehicle that would be difficult or impossible to see without the aid of mirrors. The proposed testing procedure would utilize the driver eye location specified in the current school bus mirror test that is based on the 25th-percentile adult female template. The proposed rule would require that the entire top surface of all the cylinders located at the rear of the vehicle described in the test procedure be visible to the driver when those procedures are followed. In our

<sup>9</sup> "Read Cross-view Mirror Performance: Perception and Optical Measurements," WESTAT (November 1998) (Docket No. NHSTA-2000-7967-18).

<sup>10</sup> *Id.* at 48.

<sup>11</sup> This determination is based upon the findings of the WESTAT study, which reported diminished performance at the longest mirror separation distance tested (195 inches). "Read Cross-view Mirror Performance: Perception and Optical Measurements," WESTAT (November 1998) (Docket No. NHSTA-2000-7967-18).

proposal, we have simplified the carryover school bus procedural dimensions being used, and we have provided tolerances when possible.

## 2. Rear Video Systems

Under the second compliance option, a rear video system would be required. The minimum field of view would be the same as that specified for the cross-view mirror option (*i.e.*, 3 m by 3 m).

We are proposing several requirements for rear video systems. First, the system would be required to include a monitor that depicts a reversed image similar to what would be observed in a rearview mirror and which is mounted in full view of the driver. The monitor would be required to be mounted as close to the centerline of the vehicle as practicable near the top of the windshield, but located such that the distance from the center point of the eye location of a 25th-percentile adult female seated in the driver's seat to the center of the monitor is no more than 100 cm. We believe that it would be beneficial to place the monitor in a location that is similar to that of a rearview mirror in a passenger vehicle. Presumably, truck drivers have extensive personal experience in driving passenger vehicles, so they would be accustomed to checking for objects behind the vehicle in that location. Would there be any difficulty having the monitor too close, such that for drivers who need reading glasses, the image in the monitor would be unfocused?

If the monitor's placement causes it to fall within the vehicle's head impact area, the mounting would be required to deflect, collapse, or break away when subjected to a force of 400 Newtons (N) in any forward direction that is not more than 45° from the forward longitudinal direction, as is required for passenger car interior mirrors pursuant to S5.1.2 of FMVSS No. 111. We are concerned, however, that a monitor that fully breaks away from its mounting could create an additional hazard and cause potential injury in a crash. How likely is this situation to occur, and what preventative steps could be taken? Would it be feasible to equip the vehicle with a non-adjustable monitor that is fully integrated into the dashboard?

This proposed compliance option also would require that the video system's monitor have an image size between 90 cm<sup>2</sup> and 160 cm<sup>2</sup>. We are proposing a size range for the monitor that maintains approximately the same size-to-distance ratio as that between the sideview mirror and the driver. We believe that the monitor size recommended by Mr. Silc (1.5 inches) would not be adequate. Accordingly, we believe that the range

that we have proposed would provide the driver with an image that is of a meaningful size and that would catch the driver's attention. The video camera would be required to be adjustable so that it may tilt in both the horizontal and vertical directions, for aiming purposes, and the video monitor similarly would be required to be adjustable so as to accommodate drivers of different statures. Would any implementation problems be expected related to the aimability requirement for the video camera and monitor?

The proposed test procedures are intended to ensure that the detection zone specified under the video system option is essentially the same as that for the cross-view mirrors compliance option.

### C. Applicability

NHTSA is proposing to make the new requirements for a rear object detection system applicable to new straight trucks with a GVWR of between 4,536 kg (10,000 pounds) and 11,793 kg (26,000 pounds).

The lower bound of this weight range is based on FARS data, which show that the rate of fatal backing crashes for these vehicles is substantially greater than that of vehicles with lower GVWRs. The upper bound of 11,793 kg is based on the agency's belief that it represents the maximum weight of a typical straight truck. We note, however, that paragraph S7 of FMVSS No. 111 currently defines requirements for a narrower weight class between 4,536 kg and 11,340 kg. Accordingly, the agency is requesting comments on the proposed upper bound, specifically whether straight trucks greater than 11,340 kg also should be required to be equipped with a rear object detection system.

We note that for certain vehicles, the proposed detection zone may be visible using the vehicle's existing mirrors already required under FMVSS No. 111, in which case the rear object detection system that is the subject of this proposal would not be required. Accordingly, we are proposing that testing under the standard first be conducted to see whether the targets are visible with the mirrors already being supplied on that particular vehicle. If the targets are visible, the rear object detection system would not be required.

Furthermore, we are aware that this weight classification encompasses a wide range of vehicles of many shapes and sizes, some of which may pose mounting and/or maintenance challenges for the rear object detection systems that would be required under the proposal. As a result, we might consider excluding certain types of

trucks from the standard's new requirements when we issue a final rule, particularly where it can be demonstrated that a rear object detection system would not be practicable. As discussed below, we are requesting additional public input on defining appropriate categories of straight trucks for possible exclusion.

In the ANPRM, NHTSA asked for comment on the appropriateness of applying a requirement for rear object detection to straight trucks in the designated weight range. A number of comments were received, the majority of which sought exclusion for certain types of trucks (*e.g.*, flat beds, stake bodies, dump trucks, common light duty pickup truck beds, and other high-cube or full-size van applications such as tradesmen's or mechanic's bodies). Generally, commenters argued that many of these vehicles have body styles which do not permit installation of cross-view mirrors in an effective position or that the vehicles are used in a rugged environment that would cause damage to the mirrors or other systems, thereby requiring frequent replacement or repair.

For example, commenters argued that under the circumstances in which most dump trucks are used, any system that is installed is likely to be damaged rather quickly. Commenters stated that dump trucks, as well as other work vehicles used off-road, may experience more vibration than vehicles used solely on-road; according to the commenters, such usage could either damage the system or render it ineffective due to misalignment. Commenters also argued that vibration could cause frequent deviation of cross-view mirrors and video cameras from their aimed position. In addition, commenters stated that other vehicles, such as stake bodies, tow trucks, and flat beds, may have no viable location to mount a rear object detection system.

While we acknowledge that some vehicles may not be suitable for installation of one or more of the proposed systems, NHTSA would need to be confident that there was no suitable system available for a given type of vehicle before we exclude it from the safety requirement. To help to better define the applicability of the standard once a final rule is issued, we offer the following preliminary views on coverage, which may be modified based upon public input.

We anticipate that it would be reasonable and practicable for the standard to apply to trucks in the designated weight range that have cargo boxes mounted on their chasses. Such vehicles have a configuration suitable

for mounting a rear object detection device, and these vehicles are regularly used in deliveries to both businesses and private residences. The States of New Jersey, New York, and Washington already have applied regulations to these types of vehicles, and we believe that it is important for any final rule to cover them, because of their constant presence in residential areas.

Dump trucks and tank trucks are two types of trucks that we also believe have the potential to be covered under the standard. Vehicles with dump bodies make regular residential deliveries of products such as topsoil, gravel, and mulch. Commenters on the ANPRM claimed that the rugged environment in which dump trucks sometimes operate likely would damage any system installed on the back of the vehicle. Also, the commenters argued that if a damaged rear vision system had to be replaced on a regular basis, it would make the cost of the regulation too high. However, we are concerned about the potential for injury and fatality related to backing dump trucks. (The website of the Occupational Safety and Health Administration documents over two dozen fatalities caused by backing dump trucks.) We believe that a more robust system could be used which would withstand possible abuse and still provide the vehicle operators with the necessary rear vision.

Regarding dump trucks, we seek input on the following issues. How frequently would one expect the work environment and vehicle use patterns to cause failure of a rear visibility system (e.g., due to vibration, camera breakage, lens degradation)? Could a durable video system be mounted on the backs of these types of trucks in such a way that the camera would be protected but at the same time remain effective (i.e., remain properly aimed at the detection zone specified in the standard)?

Tank trucks, such as those used for delivery of home heating fuel, water for pools, and other liquids, and for septic tank cleaning, pose a different set of problems. Although they are not used in a rugged environment, the design of these vehicles and the curvature of the tank may make it impossible to use a cross-view mirror system, due to the inability to mount a mirror in an effective location. However, we believe that a video system with a camera mounted near the license plate may be a viable option for providing the requisite rearward view.

More problematic are vehicles such as flat beds and stake bodies that have no place to mount a mirror and have only a limited number of places where a camera could be mounted. However,

even unloaded, these vehicles still may have a blind spot immediately behind the vehicle of sufficient size that could cause a child to be hidden from view, and once loaded with cargo, visibility would be expected to decline further.

We invite input on these and other categories of vehicles that are potential candidates for exclusion from the proposed standard's requirements. We request that any such comments provide information to demonstrate why none of the proposed compliance options would be practicable for that class of vehicles.

In response to NYDOT's comment that NHTSA should consider extending the standard to trucks that weigh less than 4,536 kg (10,000 pounds), we are not proposing such a requirement at this time because current data do not support such an action. Although smaller trucks often enter residential neighborhoods for the purposes of deliveries or other commercial transactions, many of these vehicles are configured as passenger-carrying vehicles, which do not have the same rear visibility limitations as larger vehicles. Nevertheless, we are continuing our research into injuries and fatalities associated with backing vehicles with a GVWR of less than 4,536 kg (10,000 pounds), and we may revisit this issue if data demonstrate that these vehicles pose a significant backing problem.

We invite comment as to whether there are vehicles within the class proposed for coverage that could meet the field of view requirements without being equipped with a rear object detection system. What would be examples of such vehicles? Could such vehicles continue to meet the proposed requirements in a fully loaded condition? Should such vehicles be excluded from the proposed requirements of the standard?

We also invite comment as to whether the proposal should be applied to buses. Smaller buses frequently are used in areas of high pedestrian traffic, such as around airports. In addition, school buses and city buses are used in areas of high pedestrian density.

Comments on the following specific questions would assist the agency in possible future rulemakings:

1. For vehicles under 4,536 kg (10,000 pounds) GVWR, should further criteria be used to identify those vehicles most likely to be used as commercial vehicles in delivery service or which may have rear vision constraints?

2. What would be the optimal minimum weight for delivery trucks that should be subject to the standard's requirements for a rear object detection system? Would it be appropriate, when

the applicable vehicle characteristics are defined, to lower the applicable weight to 2,722 kg (6,000 pounds) GVWR, or some other weight? Would some light trucks, such as a pick-up truck with a cargo box, benefit from a rear visibility system?

3. Should the standard apply to vehicles over 203 cm (80 in.) in width (or some other figure) and with no windows to the side and rear regardless of their weight? Should wider vehicles with limited or no visibility via windows of the proposed 3 m by 3 m area to the rear of the vehicle be required to have a rear object detection system?

4. Should the standard apply to buses, and if so, should any types of buses be excluded?

5. As noted above, the proposed test procedures for rear object detection systems are modeled after the standard's test procedures for school buses, although with simplified dimensional requirements and tolerances for most of those dimensions. Should these modified dimensional requirements be used for the school bus provisions as well?

#### D. Non-Visual Systems

After carefully considering the merits of a range of rear object detection devices, we have tentatively concluded that current non-visual systems (e.g., sonar/infrared systems and back-up alarms that emit an audible warning) do not provide by themselves an adequate and effective means of rear object detection for the following reasons.

Foremost, we are concerned that non-visual systems, particularly back-up alarms, implicitly shift the detection burden from the driver to persons who might unwittingly end up in the path of the backing vehicle. We remain particularly concerned that children, the primary focus of the protections contemplated by this rulemaking, often would be unable to comprehend and/or appropriately respond to an audible signal. We also note that a 2003 study reported that preschool children did not respond to audible back-up alarms with avoidance behavior, although about half of them did look toward the vehicle or halt their gait.<sup>12</sup> While we understand that some non-visual systems (e.g., infrared systems) have the ability to detect children in some circumstances, we are not convinced that they will be able to do so consistently in all cases.

<sup>12</sup> R E Sapien, J. Widman Roux, and L. Fullerton-Gleason, "Children's Response to a Commercial Back-up Warning Device," 9 *Injury Prevention* 87-88 (2003). See Docket No. NHTSA-2000-7967-21 for information related to this study.

Research on the capabilities of these non-visual systems is extremely limited, and we are concerned about the lack of human factor testing, which involves an assessment of how people interact with a given piece of equipment. For example, in some instances, a non-visual system may tend to give false warnings or fail to provide any warning, such as when a truck is backing on an incline or a decline. When backing a truck up a hill, the hill itself may enter into the sensors' detection area and cause the system to alert the driver that an obstacle is present. Backing the truck down a hill can also be problematic for non-visual systems, because obstacles may be below the system's detection zone, and consequently, the driver would not receive any warning. Although the driver may get out to investigate the first few times, warnings in similar situations may be ignored once the driver is familiar with a certain area or simply becomes aware that hills of a certain grade trigger the warning device.

In addition, we believe that the virtually infinite number of characteristics of object surface reflectivities and other factors would render a test procedure for non-visual systems either ineffective (due to the omission of some possible object characteristics) or overly burdensome (if an attempt is made to include a large range of test objects).

In sum, we believe that if a rear object detection system allows a driver to actually see a child or other person, the driver would be more likely to take appropriate action and to prevent a collision. Although we are not proposing a compliance option utilizing non-visual systems, we are not prohibiting vehicle manufacturers from installing them voluntarily. Although such systems do not add significantly to the safety benefits to be gained through the visual requirements proposed, they do not appear to cause substantial harm. There is no reason for the agency to preclude vehicle makers from providing non-visual systems as an additional customer feature.

We also considered the role of driver training, but we do not believe that it is an adequate substitute for the visual image provided by a rear object detection system. The nature of such training would vary according to the form and function of the myriad straight trucks on U.S. roadways. However, such training could be a useful supplement to each of the proposed rear object detection systems, both in terms of understanding and successfully using that system, and otherwise promoting safe backing practices.

#### *E. Retrofitting of Existing Commercial Vehicles*

Recently, NHTSA was delegated authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture where the standards are based upon and similar to a Federal motor vehicle safety standard promulgated, either simultaneously or previously, under chapter 301 of Title 49 U.S.C. (see delegation of authority at 49 CFR 1.50(n)). This authority to promulgate safety standards for commercial motor vehicles reflects the fact that certain safety features may have sufficiently significant value to warrant their incorporation in existing commercial vehicles that transport property or passengers in interstate commerce.<sup>13</sup> When utilizing this "retrofit" authority, NHTSA plans to coordinate with the Federal Motor Carrier Safety Administration regarding any such provision.

At this time, we are not proposing to require any existing commercial straight trucks to be retrofitted to meet the standard's newly proposed requirements for rear object detection systems. However, we are soliciting additional comments on several questions related to retrofitting, in the event that NHTSA later determines that such a requirement would be appropriate. The following discussion reflects our preliminary thinking regarding the feasibility and value of retrofitting existing commercial vehicles to meet the proposed requirements for an amended FMVSS No. 111.

Experience suggests that equipping existing commercial straight trucks with rear object detection systems would provide safety and economic benefits. As with new trucks, owners of existing commercial trucks would benefit from the elimination of the sizable blind spot directly behind their vehicles; with such systems, drivers would be able to see children and other pedestrians (safety benefit), as well as poles and other obstructions before any collision-related damage occurs (economic benefit). However, there also would be costs. We are exploring the possibility of retrofitting these commercial vehicles as a means of maximizing the benefit of the proposed requirement. Would any special problems be anticipated with retrofitting specific vehicle types? Should certain commercial vehicles be excluded from any future retrofitting requirement?

<sup>13</sup> The terms "commercial motor vehicle" and "interstate commerce" are defined under FMCSA regulations at 49 CFR 390.5.

The States of New Jersey, New York, and Washington presumably considered such benefits and costs when passing legislation requiring the retrofitting of trucks in those States with rear object detection systems. As a further example, UPS, one of the largest delivery companies, has chosen to retrofit its vehicles with video systems. Thus, experience suggests that retrofitting in this context has been deemed by some to be reasonable, economically feasible, and practicable. In addition, requiring retrofitting of existing commercial vehicles would permit the public to realize the full benefit of these safety devices approximately ten years sooner than would otherwise occur, if only new vehicles were required to be so equipped.

Public input on the following questions would assist the agency regarding retrofitting. What are expected to be the potential costs and benefits of retrofitting existing commercial vehicles with a rear object detection system consistent with the proposed requirements for FMVSS No. 111? Should any types of such vehicles be excluded? How much lead time would be required to retrofit existing commercial vehicles to meet the proposed requirements for rear object detection?

#### *F. FMCSA Issues Related To Retrofit and Preemption*

In light of the comments of the New York State Department of Transportation (NYDOT) and the National Truck Equipment Association (NTEA) pertaining to FMCSA preemption of State law, we believe that it is necessary to clarify the scope and nature of FMCSA's policies and programs. NHTSA consulted with FMCSA in drafting the current proposal, and FMCSA provided the following input, particularly regarding how its regulations and programs would impact a State's efforts to adopt rear object detection requirements for vehicles operating within the State.

According to FMCSA, that agency does not consider a State's adoption of safety requirements that are identical to the FMVSSs (applicable only to vehicles manufactured on or after the effective date of the safety standard) to be a matter of concern under the Motor Carrier Safety Assistance Program (MCSAP).<sup>14</sup> The example referenced by the NYDOT in its comments concerned the State's efforts to adopt a rear object detection system requirement applicable to vehicles operated in interstate commerce, prior to NHTSA's

<sup>14</sup> See 49 CFR Part 350.

publication of a rulemaking proposal on the subject. FMCSA concluded that the State should either limit the applicability of its requirement to commercial motor vehicles operating exclusively in intrastate commerce or adopt requirements compatible with the FMVSSs, in the event NHTSA adopts requirements for a rear object detection system. Therefore, if NHTSA amends FMVSS No. 111 to require a rear object detection system, FMCSA stated that it would not consider a State's adoption of those requirements for vehicles manufactured on or after the effective date to be inconsistent with the MCSAP regulations.

Additionally, with regard to NTEA's remarks, FMCSA stated that it is committed to ensuring that its requirements for vehicle parts and accessories necessary for safe operations<sup>15</sup> are consistent with the requirements under NHTSA's FMVSSs. Part 393 of the FMCSA's safety regulations already includes many cross-references to specific requirements under the FMVSSs, such as lamps and reflectors, anti-lock braking systems (ABS), automatic brake adjusters, rear impact guards and protection, seat belts, and emergency exits on school buses. If NHTSA amends FMVSS No. 111 to require a rear object detection system, FMCSA stated that it would consider amending 49 CFR Part 393 to require motor carriers operating in interstate commerce to ensure that such systems are maintained. According to FMCSA, amending Part 393 also would result in the States being required under the MCSAP to adopt compatible motor carrier safety regulations within three years of the effective date of the FMCSA rulemaking.

#### G. Effective Date

We are proposing to require covered new vehicles to comply with the rear object detection requirements to prevent backing deaths and injuries one year after publication of a final rule. We have tentatively concluded that a relatively rapid implementation schedule would be appropriate. Installation of cross-view mirrors would not involve substantial engineering efforts or changes in manufacturing processes. Manufacturers might need additional time to implement more technically demanding video systems, although we believe that one year would provide sufficient time for manufacturers to incorporate these systems as well.

<sup>15</sup> See 49 CFR Part 393.

#### V. Benefits

The agency estimates that this proposal would result in a net reduction of 23 fatalities and 43 injuries annually once all single-unit trucks are equipped with a rear object detection system, assuming a 33% effectiveness rate for these crash avoidance devices.<sup>16</sup> The present discounted value of anticipated property damage savings is estimated to be \$32 million annually (at a 3-percent discount rate). In most of these cases, the benefits would result from the ability of the rear object detection system to allow the driver to prevent the collision entirely.

The PRE provides additional detail regarding benefits, including values at a 7-percent discount rate and a discussion of the methodology used in calculating those benefits (see Chapter IV of the PRE).

In addition, because our estimate of the effectiveness of rear object detection systems (33 percent) is based primarily upon the findings of a single study conducted by Federal Express in 1984, the agency decided to include a sensitivity analysis in the PRE to examine how different effectiveness rates would impact the results of our cost and benefit analyses. Accordingly, in the sensitivity analysis, we have examined the net costs, benefits, and cost per equivalent life saved if rear object detection systems were 20 percent, 40 percent, and 60 percent effective (see Chapter VII of the PRE).

#### VI. Costs

Although discussed more fully in the PRE (see Chapters V and VII), the following summarizes our estimation of the costs associated with this proposal to require rear object detection systems in new straight trucks. The agency estimates that about 18 percent of the 365,000 new single-unit trucks sold annually have cross-view mirrors or video cameras, leaving the remaining 299,300 new trucks affected by this rulemaking. In addition, based on the agency-sponsored study discussed previously, we have tentatively

<sup>16</sup> As discussed in Chapter IV of the PRE, NHTSA's estimation of the effectiveness of rear object detection systems is based upon two public comments referencing a 1984 pilot study conducted by FedEx in four cities that found that backing incidents were reduced by 33 percent when cross-view mirrors were installed. Although the study itself was not made directly available, the Nevada Automotive Test Center provided the 33 percent figure (Docket No. NHTSA-2000-7967-7), and the Teamsters qualitatively discussed that a reduction in incidents occurred (Docket No. NHTSA-2000-7967-8). We have decided to use the same value for the effectiveness of video camera systems, although we believe that such systems may be somewhat more effective.

determined that 5 meters is the maximum distance between a cross-view mirror (mounted at the rear of a truck) and an outside rearview mirror (mounted next to the driver) that would provide a meaningful image. Under the proposal, trucks with a mirror separation of more than 5 meters would be required to use a camera system.

Therefore, of the 299,300 trucks, we estimate a counter-measure distribution of about 25 percent with mirrors and 75 percent with a camera system. The estimated consumer cost per vehicle, including installation, for an 8-inch diameter mirror and hardware is \$51.64, for a 10-inch diameter mirror and hardware is \$56.85, and for a camera system, monitor, and mounting hardware is \$325.10. It is possible that there may be some maintenance and repair costs associated with rear object detection systems, although we do not have information as to the frequency or extent of such activities. We invite comments regarding maintenance and repair costs associated with the rear object detection systems discussed in this proposal.

Based upon this information, the total consumer cost of this proposal is estimated to be \$77 million annually (in 2004 economics). The cost per equivalent life saved is estimated to be \$2.3 million (at a 3-percent discount rate).

#### VII. Public Participation

##### *How Can I Influence NHTSA's Thinking on This Notice?*

In developing this notice, NHTSA tried to address the concerns of all stakeholders. Your comments will help us determine what standard should be set for rear object detection as part of FMVSS No. 111. We invite you to provide different views on the questions we ask, new approaches and technologies about which we did not ask, new data, how this notice may affect you, or other relevant information. We welcome your views on all aspects of this notice, but we especially request comments on the specific questions articulated throughout this document. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide empirical evidence, wherever possible, to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Reference specific sections of the notice in your comments, such as the

units or page numbers of the preamble, or the regulatory sections.

- Be sure to include the name, date, and docket number of the proceeding as part of your comments.

#### *How Do I Prepare and Submit Comments?*

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Please submit two copies of your comments, including any attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to obtain instructions for filing your document electronically.

#### *How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. Each electronic filer will receive electronic confirmation that his or her submission has been received.

#### *How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter delineating that information, as specified in our confidential business information regulation. (See 49 CFR part 512).

#### *Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will

also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

#### *How Can I Read Comments Submitted By Other People?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also review filed public comments on the Internet. To read the comments on the Internet, take the following steps:

- (1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).
- (2) On that page, click on "search."
- (3) On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. (Example: If the docket number were "NHTSA-2002-1234," you would type "1234.") After typing the docket number, click on "search."

- (4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Furthermore, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

#### *Data Quality Act Statement*

Pursuant to the Data Quality Act, in order for substantive data submitted by third parties to be relied upon and used by the agency, it must also meet the information quality standards set forth in the DOT Data Quality Act guidelines. Accordingly, members of the public should consult the guidelines in preparing information submissions to the agency. DOT's guidelines may be accessed at <http://dmses.dot.gov/submit/DataQualityGuidelines.pdf>.

### **VIII. Rulemaking Analyses and Notice**

#### *A. Vehicle Safety Act*

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*),

the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.<sup>17</sup> These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.<sup>18</sup> When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.<sup>19</sup> The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.<sup>20</sup> The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.<sup>21</sup>

In proposing to require a rear object detection system for straight trucks, the agency carefully considered these statutory requirements.

First, this proposal is preceded by both a Request for Comments and an Advance Notice of Proposed Rulemaking, which facilitated the efforts of the agency to obtain and consider relevant motor vehicle safety information, as well as public comments. Further, in preparing this document, the agency carefully evaluated previous agency research and vehicle testing relevant to this proposal. We also conducted a new death certificate study to ascertain the number of backing-related fatalities and injuries, and we updated our analyses to determine the relevant target population and potential costs and benefits of our proposal. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the proposed rear object detection requirements are practicable, the agency considered the cost, availability, and suitability of various rear object detection systems for mounting on straight trucks, consistent with our safety objectives. We note that the visual systems contemplated under the proposal (*i.e.*, cross-view mirrors and video cameras) are already installed on many vehicles proposed for coverage under these amendments. However, we have requested comments as to types of

<sup>17</sup> 49 U.S.C. 30111(a).

<sup>18</sup> 49 U.S.C. 30102(a)(9).

<sup>19</sup> 49 U.S.C. 30111(b).

<sup>20</sup> *Id.*

<sup>21</sup> 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

vehicles for which such systems would be impracticable due to rugged work environments or the lack of an appropriate mounting location; if such practicability concerns cannot be resolved, the agency may find it appropriate to exclude such vehicles from the requirements of the final rule. Although the costs for some rear object detection systems (*i.e.*, video cameras) may be relatively high, we believe that manufacturers would be able to pass these costs on to vehicle customers without experiencing appreciable changes in sales. In sum, we believe that this proposal to prevent deaths and injuries associated with backing straight trucks is practicable.

Third, the proposed regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, the proposal sets forth performance requirements for both cross-view mirrors and video systems. Mirrors and video cameras are familiar technologies, and we do not believe that the specifications for these devices themselves or their placement are likely to be misinterpreted.

The proposal also includes test requirements for visual detection of a 3 m by 3 m area behind the vehicle, as marked by a set of test cylinders. This test is modeled after a similar test for object detection in front of school buses, which has been part of the standard for a number of years. Thus, the agency believes that this test procedure is sufficiently objective and would not result in any uncertainty as to whether a given vehicle satisfies the proposed rear object detection requirements.

Fourth, we believe that this proposal will meet the need for motor vehicle safety because the proposed rear object detection requirement would eliminate the blind spot directly behind most straight trucks and allow visual confirmation by the driver that the way is clear, thereby preventing backing-related deaths and injuries.

Finally, we believe that this proposal is reasonable and appropriate for motor vehicles subject to the proposed requirements. As discussed elsewhere in this notice, the agency is concerned with the amount of fatalities and serious injuries related from backing straight trucks. Our statistical data indicates that vehicles subject to the proposed requirements have a high rate of backing incidents resulting in death and injury. Available evidence also suggests that rear object detection systems are an effective countermeasure in these situations. Accordingly, we believe that

this proposal is appropriate for covered vehicles that are or would become subject to these provisions of FMVSS No. 111 because it furthers the agency's objective of preventing deaths and serious injuries associated with backing incidents.

#### *B. 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 review by the Office of Management and Budget (OMB) and to 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:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was reviewed by OMB under E.O. 12866. Further, this action has been determined to be "significant" under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). As discussed in the Preliminary Regulatory Evaluation (PRE), this rulemaking amending FMVSS No. 111 to require installation of rear object detection systems on certain new vehicles is expected have a total consumer cost estimated at \$77 million annually (in 2004 economics).

The agency has prepared a separate document (*i.e.*, the PRE) addressing in detail the benefits and costs of the proposed rule, as well as alternatives considered. A copy of the PRE is being placed in the docket.

As discussed in that document and in the preceding sections of this notice, requiring a rear object detection system on straight trucks has the potential to prevent a number of backing-related deaths and injuries, thereby furthering the agency's safety mission. Straight trucks have an incidence rate for

backing fatalities that is 8 to 17 times greater than for passenger vehicles. However, by requiring installation of either a cross-view mirror or rear video camera, we believe that it would be possible to eliminate the blind spot behind these vehicles, to permit vehicle operators to have visual confirmation that the area immediately behind the vehicle is clear, and to thereby reduce the number of backing-related injuries and fatalities.

We estimate that this proposal would result in a net reduction of 23 fatalities and 43 injuries annually once all straight trucks are equipped with a rear object detection system, assuming a 33 percent effectiveness rate for these crash avoidance devices. The present discounted value of anticipated property damage savings is estimated to be \$32 million annually. In most cases, these benefits would result from the ability of the system to prevent the collision entirely.

Our estimation of the cost of the proposed rule is based upon the following. We estimate that about 18 percent of the 365,000 new straight trucks sold annually already come equipped with a rear object detection system that would meet the proposed requirements of the rule. That leaves the remaining 299,300 new straight trucks affected by this rulemaking. Because agency-sponsored research has shown 5 meters to be the maximum distance between a cross-view mirror and an outside rearview mirror that could provide a meaningful image, under this proposal, trucks with a mirror separation of more than 5 meters would be required to use a camera system. Accordingly, NHTSA estimates a counter-measure distribution of about 25 percent for mirrors and 75 percent for cameras. The estimated consumer cost per vehicle, including installation, for an 8-inch diameter mirror and hardware is \$51.64, for a 10-inch diameter mirror and hardware is \$56.85, and for a camera system, monitoring, and mounting hardware is \$325.10. The cost per equivalent life saved is estimated to be \$2.3 million.

Although the costs for some rear object detection systems may be fairly substantial, we believe that single-unit truck manufacturers would be able to pass these costs on to vehicle customers without experiencing appreciable changes in sales. It is expected that the proposed requirements and associated costs would apply evenly across the industry and not adversely impact any one segment of that industry.

As part of this rulemaking, the agency considered a number of regulatory alternatives. We considered a variety of

systems for rear object, but we decided that a visual system was needed in the interest of safety, in order to provide the driver with a view of the backing vehicle's pathway and to maintain driver responsibility for safe operation of the vehicle while backing. We also considered the use of detection zones of different sizes and the possibility of excluding certain types of vehicles from the proposed requirements. Once again, a complete discussion of these issues related to benefits, costs, and alternatives may be found in the PRE.

### C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory or flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act and has included a regulatory flexibility analysis in the PRE. This analysis discusses potential regulatory alternatives that the agency considered that would still meet the identified safety need of eliminating the blind spot behind straight trucks. Alternatives considered included the use of detection zones of different sizes and exclusion of certain types of vehicles from the proposed requirements.

To summarize the conclusions of that analysis, the agency believes that the proposal would have a significant economic impact on a substantial number of small businesses. There are a substantial number of single-unit truck manufacturers (about 750 in the U.S.), and the cost of video cameras is relatively high. We estimate that there are approximately 12 mirror manufacturers, of which 3 are small businesses. We do not expect manufacturers of video cameras to be classified as small businesses.

As with any other Federal motor vehicle safety standard, single-unit truck manufacturers would be required to certify the vehicle's compliance with all applicable FMVSSs. However, we anticipate that single-unit truck manufacturers would pass the cost of the rear object detection system on to consumers. Further, we believe that the increase in price would have a small impact, at most, on the sales of single-unit trucks, because such vehicles are usually a necessary expense for businesses conducting routine operations. We also expect that the proposed requirements and associated costs would apply evenly across the industry and not adversely impact any one segment of that industry.

We expect that the proposed requirements could have a small positive economic impact on mirror manufacturers, due to increased sales volumes.

### D. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), 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." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts a State law unless the agency consults with State and local officials early in the process of developing the regulation.

The proposed rule to amend this Federal motor vehicle safety standard is being issued pursuant to NHTSA's statutory authority under section 30111 of the Motor Vehicle Safety Act (49 U.S.C. Chapter 301), and was analyzed in accordance with the principles and criteria set forth in Executive Order

13132. The agency determined that the rule would not have sufficient Federalism implications to warrant consultations with State and local officials or the preparation of a Federalism summary impact statement. This proposed rule would not have any substantial effects on the States, or on the current distribution of power and responsibilities among the various local officials. The reason is that this proposed rule, if made final, would apply to motor vehicle manufacturers, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule. We would note that States may comment on this proposal and that one State (New York) did comment on the ANPRM.

Section 30103(b) of 49 U.S.C. provides, "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter."

If adopted, our proposed amendments would preempt all state statutes, regulations and common law requirements that differ with it. More specifically, the amended FMVSS No. 111 would preempt State requirements for a rear object detection system on new motor vehicles that is not the same as the one that would be required under the standard. Thus, for example, it would preempt aspects of at least three State laws currently in force (*i.e.*, provisions in New Jersey,<sup>22</sup> New York,<sup>23</sup> and Washington<sup>24</sup>).

Our proposal reflects careful balancing of a variety of considerations and objectives in this field. As a primary matter, we believe that the proposal should reflect the fact that drivers have the responsibility to ensure that the pathway is clear before backing the vehicle. To this end, the NPRM is proposing several technological options that would ensure that drivers can visually confirm that the pathway is clear, including cross-view mirrors, a rear video camera, or even the driver's vision (if the configuration of the vehicle is such that the driver can see all relevant test points). We have concerns that non-visual systems, such as infrared and sonar systems, may not be sufficiently reliable or provide the same level of certainty as visual

<sup>22</sup> N.J. Stat. Ann. § 39:3-71.1 (West 2004).

<sup>23</sup> N.Y. Vehicle and Traffic Law § 375(9)(e) (McKinney 2003).

<sup>24</sup> Wash. Rev. Code Ann. § 46.37.400 (West 2004).

systems. We are also concerned that other systems, such as audible back-up alarms, could shift the burden to the person behind the backing vehicle to get out of the way; some pedestrians (e.g., children, the elderly) may be ill-equipped to take the necessary evasive action in those situations. Thus, we believe that requiring a visual rear object detection system, as proposed, would adequately address the identified backing problem with straight trucks.

We also intend to specify a uniform set of requirements for rear object detection systems installed on straight trucks consistent with the Federal system established by Congress. Congress provided NHTSA with the responsibility to establish performance standards to ensure that motor vehicles—including straight trucks—are manufactured in such a way as to meet the need for motor vehicle safety. Congress gave FMCSA the responsibility to ensure that straight trucks are operationally safe in accordance with a uniform Federal, rather than a myriad of State, operational standards. As noted above, FMCSA has concluded that States should adopt requirements consistent with the FMVSS or should limit State requirements to vehicles that will operate solely in intrastate commerce. Although we do not propose to prohibit the voluntary installation of supplemental systems by manufacturers, we believe our proposal addresses the safety need and that supplemental State or local requirements would subvert the Federal safety program Congress has established between NHTSA and FMCSA.

#### *E. Executive Order 12988 (Civil Justice Reform)*

Pursuant to Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 7, 1996), the agency has considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State’s use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative

proceedings before parties may file a suit in court.

#### *F. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)*

Executive Order 13045, “Protection of Children from Environmental Health and Safety Risks” (62 FR 19855, 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 the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This proposed rule is not subject to Executive Order 13045 because it is not “economically significant,” as defined in Executive Order 12866.

#### *G. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number. NHTSA has determined that, if made final, this proposed rule would not impose any “collection of information” burdens on the public, within the meaning of the PRA. This rulemaking would not impose any filing or recordkeeping requirements on any manufacturer or any other party. For this reason, we discuss neither electronic filing and recordkeeping nor do we discuss a fully electronic reporting option.

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress (through OMB) with explanations when the agency decides not to use available

and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

NHTSA is not aware of any voluntary consensus standards related to the proposed rear object detection systems that are available at this time. However, NHTSA will consider any such standards as they become available.

#### *I. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal 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 (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency 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 agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This proposal will not result in the expenditure of \$100 million or more by State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

#### *J. National Environmental Policy Act*

NHTSA has analyzed this proposed rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

#### *K. Regulatory Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit http://dms.dot.gov.

List of Subjects in 49 CFR Parts 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA is proposing to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.111 would be amended by revising S4, S7, S7.1, S8, S8.1, and S13 Figure 3, and by adding new S7.2, S7.2.1, S7.2.2, S14, S14.1, S14.2, S14.3, S14.4, S14.5, S14.6, and Figure 5 to read as follows:

§ 571.111 Standard No. 111; Rearview mirrors.

\* \* \* \* \*

S4. Definitions

Convex mirror means a mirror having a curved reflective surface whose shape is the same as that of the exterior surface of a section of a sphere.

Effective mirror surface means the portions of a mirror that reflect images, excluding the mirror rim or mounting brackets.

Straight truck means a single-unit truck composed of an undetachable cab and body.

Unit magnification mirror means a plane or flat mirror with a reflective surface through which the angular height and width of the image of an object is equal to the angular height and width of the object when viewed directly at the same distance except for flaws that do not exceed normal manufacturing tolerances. For the

purposes of this regulation, a prismatic day-night adjustment rearview mirror, one of whose positions provides unit magnification, is considered a unit magnification mirror.

\* \* \* \* \*

S7. Requirements for multipurpose passenger vehicles and trucks with a GVWR of more than 4,536 kg and less than 11,793 kg and buses, other than school buses, with a GVWR of more than 4,536 kg.

S7.1 Each multipurpose passenger vehicle and truck with a GVWR of more than 4,536 kg and less than 11,793 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg must have outside mirrors of unit magnification, each with not less than 323 cm² of reflective surface, installed with stable supports on both sides of the vehicle. The mirrors must be located so as to provide the driver a view to the rear along both sides of the vehicle and shall be adjustable both in the horizontal and vertical directions to view the rearward scene.

S7.2 When tested in accordance with the procedures of S14, each straight truck with a GVWR of more than 4,536 kg and less than 11,793 kg must have either a convex cross-view mirror that meets the requirements of S7.2.1 or a video monitoring system that meets the requirements of S7.2.2. However, this requirement does not apply if the straight truck equipped with the mirrors specified in S7.1 or the mirrors specified in S7.1 and S5.1 can comply with S7.2.1(a), when tested in accordance with S14.

S7.2.1 Cross-view Mirror. A convex mirror must be located with stable supports on the upper rear corner of the vehicle on the driver's side, such that:

- (a) The entire top surface of all the test cylinders (right circular in shape) must be visible;
(b) Its geometric center must be no more than 5,000 mm from the geometric center of the outside rearview mirror on the driver's side;
(c) It must not have any discontinuities or flaws that exceed normal manufacturing tolerances in the slope of its surface;

(d) It must provide for adjustment by tilting in both the horizontal and vertical directions; and

(e) It must have an average radius of curvature of no less than 203 mm, as determined under S12.

S7.2.2 Video Monitoring System. A video monitoring system must be located on the vehicle and have properties such that:

- (a) The entire top surface of all the test cylinders (right circular in shape) must be visible;
(b) It must include a video monitor mounted in full view of the driver;
(c) The monitor must be mounted as close to the centerline of the vehicle as practicable near the top of the windshield, but located such that the distance from the center point of the eye location of a 25th-percentile adult female seated in the driver's seat to the center of the monitor is no more than 1,000 mm;
(d) The system must provide an image size of not less than 90 cm² and not more than 160 cm², and the image must be reversed to show the scene as if it were viewed through a rearview mirror;
(e) The video camera and monitor each must be adjustable by tilting in both the horizontal and vertical directions;

(f) The system must provide an image only when the vehicle's transmission is in reverse; and

(g) If the monitor is in the head impact area, as defined in 49 CFR § 571.3, the mounting must deflect, collapse, or break away when subjected to a force of 400 ± 1 Newtons (N) in any forward direction that is not more than 45° from the forward longitudinal direction.

S8. Requirements for multipurpose passenger vehicles and trucks with a GVWR of 11,793 kg or more.

S8.1 Each multipurpose passenger vehicle and truck with a GVWR of 11,793 kg or more must have outside mirrors of unit magnification, each with not less than 323 cm² reflective surface, installed with stable supports on both sides of the vehicle. The mirrors must be located so as to provide the driver a view to the rear along both sides of the vehicle and must be adjustable both in the horizontal and vertical directions to view the rearward scene.

\* \* \* \* \*

S13. School bus mirror test procedures. \* \* \*

\* \* \* \* \*

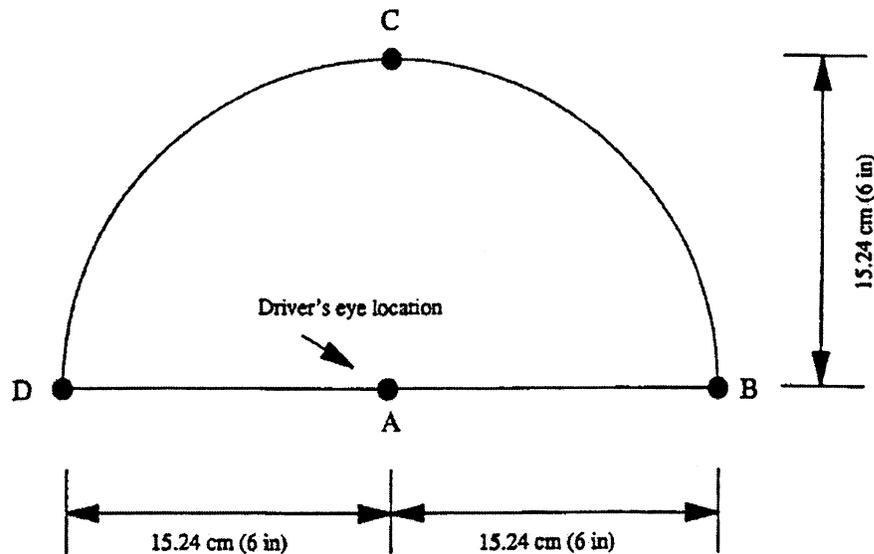


Figure 3 - Camera Locations for School Bus Field-of-View Test and for Cross-View Mirror and Video System Test

\* \* \* \* \*

S14. *Cross-view mirror and video system test procedures.* When determining compliance with the requirements of S7.2, the vehicle is tested in accordance with the following conditions and procedures.

S14.1 Utilize cylinders of a color which provides a high contrast with the surface on which the vehicle is parked.

S14.2 The cylinders are  $305 \pm 1$  mm high and  $305 \pm 1$  mm in diameter.

S14.3 Place the cylinders at locations as specified in S14.3(a) through S14.3(d) below and as illustrated in Figure 5.

(a) Place cylinders G, H, and I so that they are tangent to a transverse vertical plane tangent to the rearward-most surface of the vehicle's rear bumper. Place cylinders D, E, and F so that their centers are located in a transverse vertical plane that is  $1,500 \pm 10$  mm rearward of a transverse vertical plane passing through the centers of cylinders G, H, and I. Place cylinders A, B, and C so that their centers are located in a transverse vertical plane that is  $3,000 \pm 10$  mm rearward of the transverse vertical plane passing through the centers of cylinders G, H, and I.

(b) Place cylinders B, E, and H so that their centers are within 10 mm of the longitudinal vertical plane that passes through the vehicle's longitudinal centerline.

(c) Place cylinders A, D, and G so that their centers are in a longitudinal vertical plane that is  $1,500 \pm 10$  mm, toward the passenger side, from the longitudinal vertical plane passing through the center of cylinders B, E, and H.

(d) Place cylinders C, F, and I so that their centers are in a longitudinal vertical plane that is  $1,500 \pm 10$  mm, toward the driver side, from the longitudinal vertical plane passing through the centers of cylinders B, E, and H.

S14.4 The driver's eye location is the eye location of a 25th-percentile adult female, when seated in the driver's seat as follows:

(a) The center point of the driver's eye location is the point located  $685 \pm 5$  mm vertically above the intersection of the seat cushion and the seat back at the longitudinal centerline of the seat.

(b) Adjust the driver's seat to the midway point between the forward-most and rearward-most positions. If there is not an adjustment position at the midway point, use the closest adjustment position to the rear of the midpoint. If the seat is separately adjustable in the vertical direction, adjust it to the lowest position. If the seat back is adjustable, adjust the seat back angle to the manufacturer's nominal design riding position in accordance with the manufacturer's recommendations.

S14.5 *Adjustment of Viewing Devices.*

(a) If a cross-view mirror is used, adjust the driver's side exterior mirror and the cross-view mirror in accordance with the manufacturer's recommendations before the test. If there are no manufacturer's recommendations, adjust the mirrors to meet the field-of-view requirements herein. The mirrors must not be moved or readjusted thereafter.

(b) If a video system is used, adjust the monitor and video camera in accordance with the manufacturer's recommendations. If there are no manufacturer's recommendations, adjust the monitor and video camera to meet the field-of-view requirements herein. The monitor and video camera must not be moved or readjusted thereafter.

(c) If an inside rearview mirror is used, adjust the mirror to achieve the field of view specified in S5.1.1.

S14.6 *Determination of Compliance.*

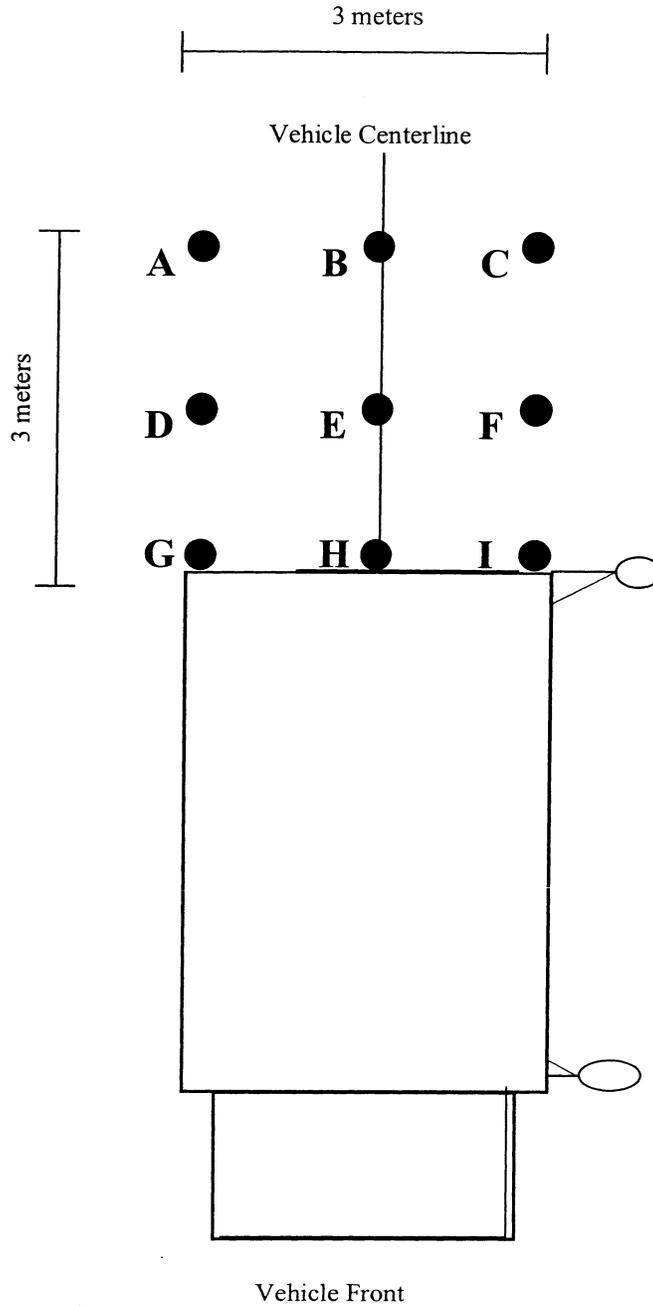
(a) If mirrors are used for compliance purposes, place a 35 mm or larger format camera, or video camera, so that the center of its image plane is located at the center point of the driver's eye location or at any single point within a semicircular area established by a  $152 \pm 1$  mm radius parallel to and forward of the center point (determined in accordance with Figure 3 of S13). With the camera or video camera at any location on or within the semicircle, look through the camera or video camera at the driver's side mirror (or the inside rearview mirror if so equipped) and determine if the entire top surface of each cylinder is directly visible, and photograph the results. If a video camera is used, the monitor's output may be recorded for the test results.

(b) If a video system is used for compliance purposes, place a 35 mm or larger format camera, or video camera, so that the center of its image plane is located at the center point of the driver's eye location or at any single point within a semicircular area established by a  $152 \pm 1$  mm radius parallel to and

forward of the center point (determined in accordance with Figure 3 of S13). With the camera or video camera at any location on or within the semicircle,

look through the camera or video camera at the video system monitor and determine if the entire top surface of each cylinder is directly visible, and

photograph the results. If a video camera is used, the monitor's output may be recorded for the test results.



**Figure 5.**  
**Location of Test Cylinders for Rear Object Detection Test**  
 All Dimensions in Meters (m)

Issued: September 2, 2005.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 05-17987 Filed 9-9-05; 8:45 am]

BILLING CODE 4910-59-P

# Notices

Federal Register

Vol. 70, No. 175

Monday, September 12, 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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Board for International Food and Agricultural Development; One Hundred and Forty-Fifth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and forty-fifth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 12 p.m. and from 1 p.m. to 6:15 p.m. on October 12th, 2005 in the Marriott Hotel, 7th and Grand Avenue, Des Moines, Iowa. The meeting is being held in conjunction with the World Food Prize events scheduled for October 13–14 in Des Moines.

The BIFAD will interact with representatives from U.S. universities, Collaborative Research Support Programs (CRSPs), agribusiness and private sector communities along with international agriculture leaders from Africa. Themes will focus on agriculture and human nutrition as they relate to countering HIV/AIDS, enhancing cognitive child development and other aspects of human nutrition as well as emerging issues in international agricultural development, and other items of general interest.

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact John Rifembark, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–85, Washington DC, 20523–2110 or

telephone him at (202) 712–0163 or fax (202) 216–3010.

**John T. Rifembark,**

*USAID Designated Federal Officer for BIFAD, Office of Agriculture, Bureau for Economic Growth, Agriculture & Trade, U.S. Agency for International Development.*

[FR Doc. 05–17955 Filed 9–9–05; 8:45 am]

**BILLING CODE 6116–01–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

September 6, 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.

### Office of the Chief Financial Officer

*Title:* Debt Collection.

*OMB Control Number:* 0505–0007.

*Summary of Collection:* The Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749, as amended by Public Law 98–167, 97 Stat. 1104, and the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, require that any payable monies or those that may become payable may be subject to administrative offset for the collection of a delinquent debt a person or legal entity owes to the United States. Section 10 of the act requires that debtors be provided due process prior to the collection of any claims through administrative offset. Delinquent debtors wishing to appeal must provide the creditor agencies with relevant information. USDA agencies will collect information using a letter of intent from the creditor agencies to delinquent debtors.

*Need and Use of the Information:* USDA agencies will collect information using a letter of intent from the creditor agencies to delinquent debtors targeted for administrative offset who want additional information; wish to enter into repayment agreements; or wish to request a review of agencies' determination to offset appropriation action. The creditor agencies will not be able to comply with the due process provision of the Debt Collection Act or the Debt Collection Improvement Act if relevant information is not collected.

*Description of Respondents:* Individuals or households; Business or other for-profit; Farms.

*Number of Respondents:* 16,985.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 33,790.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 05–17965 Filed 9–9–05; 8:45 am]

**BILLING CODE 3410–KS–P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service**

[Docket Number FV-05-305]

**United States Standards for Grades of Globe Artichokes****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to revise the United States Standards for Grades of Globe Artichokes. AMS is proposing to include a U.S. No. 1 Long Stem grade along with an undersize tolerance of 5 percent in the standards. The new grade will have the same requirements as the U.S. No. 1 except that the stems must be smoothly cut to a minimum length of at least 8 inches, unless specified to a longer length in connection with the grade. AMS is proposing to further define "fairly compact" to include a definition for "slightly spread" to mean, "the outer scales may be slightly open, but the inner scales at the tip of the artichoke must be closely folded into the bud." The proposed revisions would bring the standards for globe artichokes in line with current marketing practices, thereby improving their usefulness in serving the industry.

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

**ADDRESSES:** Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250-0240; Fax (202) 720-8871, E-mail [FPB.DocketClerk@usda.gov](mailto:FPB.DocketClerk@usda.gov). Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Globe Artichokes is available either at the above address or by accessing the Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfrfv.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Cheri L. Emery, at the above address or call (202) 720-2185; E-mail [Cheri.Emery@usda.gov](mailto:Cheri.Emery@usda.gov).

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as

amended, directs and authorizes the Secretary of Agriculture "To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary United States Standards for Grades of Globe Artichokes using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1969.

**Background**

Prior to undertaking research and other work associated with revision of the grade standards, AMS published a notice in the **Federal Register** (70 FR 21391) on April 26, 2005, soliciting comments on the possible revision to the United States Standards for Grades of Globe Artichokes.

In response to our request for comments, AMS received one comment from an industry group. The comment was a request to revise the current standards to allow the standards to be used for "long stem" globe artichokes in addition to the traditional "short stem" globe artichokes. AMS is proposing to include a U.S. No. 1 Long Stem grade along with an undersize tolerance of 5 percent in the standards. The new grade will have the same requirements as the U.S. No. 1 except that the stems must be smoothly cut to a minimum length of at least 8 inches unless specified to a longer length in connection with the grade. The Agency has been asked to revise the standards to further define "fairly compact" to include a definition for "slightly spread." AMS is proposing "slightly spread" to mean, "the outer scales may be slightly open, but the inner scales at the tip of the artichoke must be closely folded into the bud." The Agency has also been asked about the current guidelines for scoring "frosted artichokes." The standards provide a definition for damage and serious damage based upon materially or seriously affecting the appearance, or the edible, or marketing quality of the globe artichoke. AMS believes that the

current definitions for damage and serious damage within the scoring guide are sufficient for determining the extent of frost injury to the globe artichoke.

This proposal will bring the standards for globe artichokes in line with current marketing practices, thereby improving their usefulness in serving the industry.

The official grade of a lot of globe artichokes covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (7 CFR 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on changes to the standard.

**Authority:** 7 U.S.C. 1621-1627.

Dated: September 6, 2005.

**Lloyd C. Day,***Administrator, Agricultural Marketing Service.*

[FR Doc. 05-17947 Filed 9-9-05; 8:45 am]

**BILLING CODE 3410-02-P****DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service**

[Docket Number FV-05-306]

**United States Standards for Grades of Lemons****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) published a notice soliciting comments as to whether any changes were necessary to the voluntary United States Standards for Grades of Lemons. No comments were received. The Agency has decided not to proceed further with this action due to lack of comments.

**EFFECTIVE DATE:** September 12, 2005.**FOR FURTHER INFORMATION CONTACT:**

Cheri L. Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250-0240, Fax (202) 720-8871 or call (202) 720-2185; E-mail [Cheri.Emery@usda.gov](mailto:Cheri.Emery@usda.gov). The United States Standards for Grades of Lemons are available either through the address cited above or by accessing the Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfrfv.htm>.

**Background**

At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS had identified the United States Standards for Grades of Lemons for a possible revision. The United States Standards for Grades of Lemons were last amended December 27, 1999.

On April 26, 2005, a notice seeking comments regarding any revision to the lemon grade standards that may be necessary to better serve the industry was published in the **Federal Register** (70 FR 21392) with the comment period that ended June 27, 2005. During that sixty-day comment period, no comments were received.

The Agency has decided not to proceed further with this action.

**Authority:** 7 U.S.C. 1621-1627.

Dated: September 6, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05-17946 Filed 9-9-05; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE****Forest Service****Fanshaw Project Environmental Impact Statement**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice to rescind notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Department of Agriculture, Forest Service, is issuing this notice to advise the public that we are rescinding the notice of intent (NOI) to prepare an environmental impact statement (EIS) for the Fanshaw Project.

**FOR FURTHER INFORMATION CONTACT:** Tiffany Benna, Team Leader at Petersburg Ranger District, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772-3871.

**SUPPLEMENTARY INFORMATION:** The Forest Service is rescinding the NOI published in the **Federal Register** on May 4, 2000 to prepare an EIS for the Fanshaw Project. The NOI is being rescinded because the project was based on the 1999 Tongass Land Management Plan Revision Record of Decision.

Dated: August 24, 2005.

**Forrest Cole,**

*Tongass Forest Supervisor.*

[FR Doc. 05-18007 Filed 9-9-05; 8:45 am]

**BILLING CODE 3410-11-M**

**DEPARTMENT OF AGRICULTURE****Forest Service****Notice of Tri-County Advisory Committee Meeting**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Beaverhead-Deerlodge National Forest's Tri-County Resource Advisory Committee will meet on Thursday, October 6, 2005, from 4 p.m. to 8 p.m. in Deer Lodge, Montana, for a business meeting. The meeting is open to the public.

**DATES:** Thursday, October 6, 2005.

**ADDRESSES:** The meeting will be held at the USDA Service Center, 1002 Hollenback Road, Deer Lodge, Montana.

**FOR FURTHER INFORMATION CONTACT:**

Thomas W. Heintz, Designated Forest Official (DFO), Acting Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683-3973.

**SUPPLEMENTARY INFORMATION:** Agenda topics for this meeting includes a review of projects approved and proposed for funding as authorized under Title II of Pub. L. 106-393, new proposals for funding, and public comment. If the meeting location is changed, notice will be posted in local newspapers, including The Montana Standard.

Dated: September 6, 2005.

**Thomas W. Heintz,**

*Designated Federal Official.*

[FR Doc. 05-17981 Filed 9-9-05; 8:45 am]

**BILLING CODE 3410-11-M**

**DEPARTMENT OF AGRICULTURE****Forest Service****Notice of Madison-Beaverhead Advisory Committee Meeting**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393), the Beaverhead-Deerlodge National Forest's Madison-Beaverhead Resource Advisory Committee will meet on Tuesday, October 11, 2005, from 10 a.m. until 4 p.m. in Alder, Montana, for a business meeting. The meeting is open to the public.

**DATES:** Tuesday, October 11, 2005.

**ADDRESSES:** The meeting will be held at the Fire Hall in Alder, Montana.

**FOR FURTHER INFORMATION CONTACT:**

Thomas W. Heintz, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683-3973.

**SUPPLEMENTARY INFORMATION:** Agenda topics for these meetings include hearing and deciding on proposals for projects to fund under Title II of Pub. L. 106-393, hearing public comments, and other business. If the meeting location changes, notice will be posted in local newspapers, including the Dillon Tribune and The Montana Standard.

Dated: September 6, 2005.

**Thomas W. Heintz,**

*Acting Forest Supervisor.*

[FR Doc. 05-17982 Filed 9-9-05; 8:45 am]

**BILLING CODE 3410-11-M**

**DEPARTMENT OF AGRICULTURE****Natural Resources Conservation Service****North Fork Cowanesque River Watershed, Potter County, PA**

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Fork Cowanesque River Watershed, Potter County, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin E. Heard, State Conservationist, USDA-Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110-2993; Phone: 717-237-2200; Fax: 717-237-2239.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robin E. Heard, State Conservationist, has determined that the preparation and review of an

environmental impact statement are not needed for this project.

The project purpose is to maintain the current level of flood damage reduction by rehabilitating the existing North Fork Dam. Dam rehabilitation will bring North Fork Dam into compliance with current dam design, performance and safety criteria and extend its service life by 100 years. The planned works of improvement include raising the top of dam about 8 feet, stabilizing the existing auxiliary spillway, lining the principal spillway outlet pool with riprap, refurbishing the existing principal spillway and installing a graded filter of drainfill along the toe of the dam.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robin E. Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: August 30, 2005.

**Robin E. Heard,**

*State Conservationist.*

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.916—Watershed Rehabilitation Program—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

[FR Doc. 05-17966 Filed 9-9-05; 8:45 am]

BILLING CODE 3410-16-P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### South River Watershed Structures Numbers 23, 25 and 26, Augusta County, VA

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations [40 CFR part 1500]; and the Natural Resources Conservation Service Regulations [7 CFR part 650]; the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact

statement is not being prepared for South River Watershed Dams Numbers 23, 25 and 26, Augusta County, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Denise Doetzer, State Conservationist, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229. Telephone (804) 287-1691, E-Mail [Denise.Doetzer@va.usda.gov](mailto:Denise.Doetzer@va.usda.gov).

**SUPPLEMENTARY INFORMATION:** The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Denise Doetzer, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading three existing floodwater retarding structures.

The Notice of a Finding of No Significant Impact [FONSI] has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Denise Doetzer at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

**M. Denise Doetzer,**

*State Conservationist.*

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials].

#### Introduction

The South River Watershed Rehabilitation Project is a federally assisted action authorized for planning under Public Law 106-472, the Small Watershed Rehabilitation Act, which amends Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the supplemental watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the

assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229-5014.

#### Recommended Action

This document describes a plan for upgrading three existing floodwater retarding structures, South River Watershed Dams Numbers 23, 25 and 26, to meet current dam design and safety criteria in the Commonwealth of Virginia. The plan calls for the widening and/or armoring of the auxiliary spillways, and raising the height of the top of each dam 4-5 feet through the construction of parapet walls. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Raise the top of each dam 4-5 feet by installing a concrete parapet wall on the upstream side of the dam crest. The auxiliary spillways will be widened and/or armored with articulated concrete blocks. These are the major structural components of the project. There are a number of smaller improvements such as elevating and lengthening the training dikes, cleaning the dam toe drains, replacing the square risers with rectangular risers, removing trees from the abutments, and improving the access road.

2. The measures will be planned and installed by developing a project agreement with the current operator of the dam.

#### Effects of Recommended Action

Making the proposed improvements will bring these three South River Watershed Dams into compliance with current dam design and safety criteria. This will essentially eliminate the risk to loss of life for individuals in 191 homes, 10 commercial buildings, 2 churches, 3 major roads and 13 residential roads downstream. The daily traffic counts for the three major roads total about 3,700 vehicles. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. About 3.75 acres of wetland and

wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be impacted by the project.

There are no wilderness areas in the watershed.

There are no planned mitigation requirements for the project.

No significant adverse environmental impacts will result from the dam rehabilitation measures except for minor inconveniences to local residents during construction.

#### Alternatives

Six alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

#### Consultation and Public Participation

Original sponsoring organizations include the Augusta County Board of Supervisors, the City of Waynesboro, and the Headwaters Soil and Water Conservation District. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the South River Watershed. The Headwaters Soil and Water Conservation District agreed to serve as "lead sponsor" being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process. Meetings with the project sponsors were held throughout the planning process.

An Interdisciplinary Planning Team provided planning assistance for this project. Planning guidelines included the NRCS nine-step planning process and planning procedures outlined in the NRCS National Watershed Manual. Examples of tasks completed by the Planning Team include, but are not limited to, preliminary investigations, hydrologic analyses, reservoir sedimentation surveys, economic analyses, formulating and evaluating alternatives, and writing the Supplemental Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process were evaluated at Planning Team meetings. Informal discussions amongst

Planning Team members, partner agencies, and landowners were conducted throughout the entire planning period.

A scoping meeting was held on February 13, 2004 to identify issues of economic, environmental, cultural, and social concerns in the watershed. Representatives from the Virginia Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management and the Division of Soil and Water Conservation, the Virginia Department of Emergency Management, the Virginia Department of Transportation, the Virginia Department of Environmental Quality, the Virginia Department of Forestry, the Virginia Department of Game and Inland Fisheries, the Augusta County Board of Supervisors, the City of Waynesboro, the Headwaters Soil and Water Conservation District, the U.S. Forest Service, the U.S. Army Corps of Engineers, and the USDA Natural Resources Conservation Service participated in the meeting.

A public meeting was held on October 30, 2003 to explain the Small Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the South River Watershed. Potential alternative solutions to bring the South River Watershed Dams into compliance with current dam design and safety criteria were also presented. Meeting participants provided input on issues and concerns to be considered in the planning process. A fact sheet was distributed which addressed frequently asked questions regarding the South River Watershed Dams.

A second public meeting was held on March 9, 2004 to discuss the need for landowner permission to access the property during the planning process.

A third public meeting was held on April 12, 2005 to summarize planning accomplishments, convey results of the reservoir sedimentation surveys, and present various structural alternatives. The selected alternative was identified as the most complete, acceptable, efficient, and effective plan for the watershed.

#### Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on South River Watershed

Dams Numbers 23, 25 and 26 is not required.

**M. Denise Doetzer,**  
State Conservationist.

[FR Doc. 05-17967 Filed 9-9-05; 8:45 am]

BILLING CODE 3410-16-P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 081705D]

#### Atlantic Highly Migratory Species; Meeting of Atlantic Highly Migratory Species and Billfish Advisory Panels; Nominations for Atlantic Highly Migratory Species and Billfish Advisory Panels

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

**ACTION:** Notice; advisory panel meetings; request for nominations.

**SUMMARY:** NMFS will hold a joint three day Highly Migratory Species Advisory Panel (HMS AP) and Billfish Advisory Panel (Billfish AP) meeting in October 2005. Additionally, NMFS solicits nominations for the HMS AP and the Billfish AP. The intent of these joint Advisory Panels meetings is to consider alternatives for the conservation and management of HMS as presented in the Draft Consolidated HMS Fishery Management Plan, Draft Environmental Impact Statement, and proposed rule.

**DATES:** The joint HMS-Billfish AP meeting will be held from 1 p.m. to 5 p.m. on Tuesday, October 11, 2005; from 8 a.m. to 5 p.m. on Wednesday, October 12, 2005; and from 8 a.m. to 5 p.m. on Thursday, October 13, 2005.

Nominations must be submitted on or before October 27, 2005.

**ADDRESSES:** The meetings will be held at the Holiday Inn, 8777 Georgia Avenue (Rt. 97), Silver Spring, MD 20910; phone: 301-589-0800.

You may submit nominations and requests for the AP Statement of Organization, Practices, and Procedures by any of the following methods:

- Email: [SF1.081705D@noaa.gov](mailto:SF1.081705D@noaa.gov).

Include in the subject line the following identifier: I.D. 081705D.

- Mail: Margo Schulze-Haugen, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: 301-713-1917.

#### FOR FURTHER INFORMATION CONTACT:

Othel Freeman or Heather Stirratt at 301 713-2347.

**SUPPLEMENTARY INFORMATION:****Introduction**

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104-297, provided for the establishment of Advisory Panels (AP) to assist in the collection and evaluation of information relevant to the development of any FMP or FMP amendment. NMFS consults with and considers the comments and views of an HMS AP when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, and sharks, and consults with a Billfish AP for Atlantic billfish plans and amendments. These APs have previously consulted with NMFS on the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2004), and Amendment 1 to the Billfish FMP (April 1999).

Nominations are being sought to fill one-third of the posts on the HMS AP for a 3-year appointment and one-half of the posts on the Billfish AP for a 2-year appointment. The nomination process, and appointments are set forth in the Statement of Organization, Practices, and Procedures for each AP.

Additionally, a specific nomination request is being solicited for a vacant seat on the HMS AP. Nominations for this seat should have definable interests and commercial expertise for the Caribbean region.

**Procedures and Guidelines***A. Nomination Procedures for Appointments to the Advisory Panels*

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental entities, and non-governmental organizations will be considered for membership in each AP.

Nominations are invited from all individuals and constituent groups. Nominations should include:

1. The name of the applicant or nominee and a description of their interest in HMS or one species in particular from among sharks, swordfish, tunas, and billfish;
2. A statement of background and/or qualifications;
3. The AP to which the applicant seeks appointment;
4. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP; and
5. Outreach resources.

**Tenure for the HMS AP**

Member tenure will be for 3 years (36 months), with one-third of the members= terms expiring on the last day of each calendar year. However, the tenure of the individual filling the vacant seat will be for 3 years and 3 months (39 months).

**Tenure for the Billfish AP**

Member tenure will be for 2 years (24 months), with one-half of the terms expiring on the last day of each calendar year.

*B. Participants*

Nominations for each AP will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. The HMS AP consists of not less than 23 members who are knowledgeable about the fisheries for Atlantic HMS species. The Billfish AP consists of not less than nine members who are knowledgeable about the fisheries for Atlantic billfish species.

NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each area of interest must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of each AP. Criteria for membership include one or more of the following: (1) experience in the recreational fishing industry involved in catching swordfish, tunas, billfish, or sharks; (2) experience in the commercial fishing industry for HMS; (3) experience in fishery-related industries (marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, (non-Federal) state, national, or international organization representing marine fisheries, environmental, governmental or academic interests dealing with HMS.

Five additional members in each AP include one voting member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The AP also includes 22 *ex officio* participants: 20 representatives of the constituent states and two representatives of the constituent interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for each AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the AP meetings.

*C. Meeting Schedule*

Meetings of each AP will be held as frequently as necessary but are routinely held once each year in the spring. Often the meetings are held jointly, and may be held in conjunction with other advisory panel meetings or public hearings.

The October 2005 joint HMS-Billfish AP meeting will focus on management alternatives for Atlantic tunas, swordfish, sharks, and billfish. The proposed rule and draft HMS FMP describe a range of management measures that could impact fishermen and dealers for all HMS fisheries. These management measures include those to: establish mandatory workshops for fishermen and dealers; consider methods of modifying and establishing time/area closures; address rebuilding and/or overfishing of northern albacore tuna, finetooth sharks, and Atlantic billfish; simplify the management process of bluefin tuna; change the fishing year for tunas, swordfish, and billfish back to a calendar year; authorize additional fishing gears; and clarify existing regulations. In addition to these management measures, NMFS also announces its decision: to not include the no sale provision for the artisanal handline fishery in Puerto Rico, as outlined in the 1988 Atlantic Billfish FMP in the HMS FMP; to formally withdraw the proposed rule to establish an annual domestic recreational landing limit of 250 Atlantic blue and white marlin, combined (September 17, 2003, 68 FR 54410); and to consider a Petition for Rulemaking regarding a closure of bluefin tuna spawning grounds within the draft HMS FMP.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Othel Freeman or Heather Stirratt (**FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 6, 2005.

**Emily Menashes,**

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

[FR Doc. 05-17988 Filed 9-9-05; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**External Advisory Panel for NOAA's Oceans and Human Health Initiative**

**AGENCY:** National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of solicitation of members for an external advisory panel for the NOAA Oceans and Human Health Initiative.

**SUMMARY:** The Oceans and Human Health Act of 2004 (Pub. L. 108-447) created a national, interagency research program to improve understanding of the role of the oceans in human health. Section 903(a) of this Act authorizes the Secretary of Commerce to establish an Oceans and Human Health Initiative (OHHI) to coordinate and implement research and activities of NOAA related to the role of the oceans, the coasts, and the Great Lakes in human health. The OHHI is further authorized to provide support for (1) Centralized program and research coordination, (2) an advisory panel, (3) one or more NOAA national centers of excellence, (4) research grants, and (5) distinguished scholars and traineeships. Section 903(b) of the OHHI Act further authorizes the Secretary of Commerce to establish an oceans and human health advisory panel to assist in the development and implementation of the NOAA OHHI. This advisory panel is to provide for balanced representation of individuals with multi-disciplinary expertise in the marine and biomedical sciences and is not subject to the Federal Advisory Committee Act (5 U.S.C. App.).

Nominations to the OHHI advisory panel are being solicited herein. The intent is to select from the nominees. However, NOAA retains the prerogative to name people to the advisory panel who were not nominated if it deems it necessary to achieve the desired balance. Once selected, NOAA will post the review panel, with abridged resumes, at <http://oceanservice.noaa.gov/aaoffice/OHHI/>.

**DATES:** Nominations should be sent to the address specified and must be received within 30 days following the

date of publication of this announcement.

**ADDRESSES:** Nominations should be submitted electronically to Dr. Paul Sandifer ([Paul.Sandifer@noaa.gov](mailto:Paul.Sandifer@noaa.gov)) or mailed to Dr. Paul Sandifer, c/o Hollings Marine Laboratory, 331 Fort Johnson Road, Charleston, South Carolina 29412.

**FOR FURTHER INFORMATION CONTACT:** Dr. Paul Sandifer (843) 762-8814.

**SUPPLEMENTARY INFORMATION:** Panel members shall not be employed by NOAA. Nominations should describe the nominees's contact information and qualifications relative to the criteria given below, or include a resume. Anyone is eligible to nominate, and nominations from organizations and self-nominations are encouraged. The advisory panel is expected to have up to a maximum of 15 members, with a variety of backgrounds (recognizing that it will not be practical to have all backgrounds represented), with respect to:

1. Particularly relevant areas of marine and biomedical sciences, such as:
  - a. Conservation medicine, diseases of humans, diseases of marine organisms;
  - b. Epidemiology and human health sciences;
  - c. Harmful algal bloom (HAB) impacts on public health;
  - d. Source tracking and environmental microbiology;
  - e. Marine pharmaceuticals and other natural products;
  - f. Marine organisms and habitats as models for biomedical research and/or indicators of environmental condition;
  - g. Pollutants, contaminants, and ecological chemistry;
  - h. Seafood safety;
  - i. Remote sensing, observing systems; and predictive models;
  - j. Ecosystem science and services;
  - k. Climate change and variability;
  - l. Genomics and proteomics;
  - m. Biomaterials, bioengineering, and other techniques for producing marine products, including chemical, aquaculture, and recombinant DNA;
  - n. Outreach and education; and
  - o. Social sciences relevant to human health.
2. Experience in academia, within mission-oriented government agencies, non-governmental organizations, and the private sector;
3. Familiarity with NOAA's mandates; and
4. Being a science provider to key generic groups of stakeholders, science interpreter to groups of stakeholders, or stakeholder with a history of interaction with science providers.

The advisory panel members should have the following qualifications:

1. National and international recognition within their profession;
2. Knowledge of the scientific, technical, and biomedical information needed to support NOAA's Oceans and Human Health Initiative, coupled with broad familiarity with NOAA's mission;
3. Knowledge of, and experience with, the organization and management of complex, mission-oriented scientific and/or public health programs; and
4. Ability to represent views of academia, government agencies, non-governmental organizations, or the private business sector.

The qualifications of individuals are expected to be outstanding with respect to one or more, but not necessarily all, of the criteria. Because of the limited size of the advisory panel, management organization expertise must include expertise directly related to ecosystem condition or human health or the very special features of science applied to government decision-making.

The purpose of the OHHI advisory panel is to advise NOAA with regard to:

1. Development of overall vision, mission and goals for its OHHI;
2. Preparation and periodic updating of a NOAA OHHI Research Plan;
3. Communication, coordination and integration of OHHI activities with other programs and partners, including but not limited to the NSF/NIEHS Centers of Oceans and Human Health, the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia, human health academic and medical communities, and state environmental, health and natural resource agencies;
4. OHHI performance and progress;
5. Effectiveness of NOAA's education and outreach efforts; and
6. Such other matters as may be identified.

Initial appointments to the advisory panel will be for three-year terms, and the panel is expected to meet twice yearly.

Dated: August 30, 2005.

**John L. Hayes,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

[FR Doc. 05-17958 Filed 9-9-05; 8:45 am]

**BILLING CODE 3510-JE-M**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 090705C]

**Mid-Atlantic Fishery Management Council; Public Hearings**

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

**ACTION:** Notice of public scoping meetings, request for comments.

**SUMMARY:** The Mid-Atlantic Fishery Management Council was tasked by Congress, together with the New England Fishery Management Council, South Atlantic Fishery Management Council, and the Gulf of Mexico Fishery Management Council, to incorporate ecosystem considerations into their fisheries management processes. The purpose of this ecosystem initiative mandated by Congress is to engage the four Councils and their constituencies in public debate on the establishment of ecosystem goals, the inclusion of the types of considerations to be addressed in ecosystem management, and the identification of issues not covered under existing authorities.

**DATES:** Written comments will be accepted until November 15, 2005. All scoping meetings will begin at 7 p.m. For a list of specific dates and locations of the meetings, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Comments may be submitted through any of the following methods:

- Mail: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904
- Fax: 302-674-5399
- E-mail: [info@mafmc.org](mailto:info@mafmc.org)

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director of the Mid-Atlantic Fishery Management, 302-674-2331, ext. 19.

**SUPPLEMENTARY INFORMATION:****Background**

The purpose of these scoping meetings is to undertake public meetings with stakeholder groups and interested parties "to facilitate wide-ranging discussions with affected/interested parties and the general public in nine topic areas: (1) Views regarding the adequacy of current approaches for addressing ecosystem considerations, (2) the nature of ecosystem-based management and the goals to be achieved in addressing ecosystem

issues, (3) the nature of the public decision making processes within the Councils for addressing management tradeoffs, consistent with identified goals, (4) mechanisms for considering activities outside the FMC's purview but influencing ecosystem productivity, (5) the boundaries of sub-regional ecosystems within the areas of the various FMCs, (6) the types of management measures that would be incorporated into ecosystem approaches for fishery management, consistent with the identified goals, (7) the specific regional issues that need to be addressed in a fishery ecosystem plan (FEP), (8) techniques for determining success of ecosystem-based management, and (9) other issues considered important in any particular region." The scoping document that will be used at the meetings will be mailed to all entities on the Council's mailing list. Additional copies are readily available from the above address. Following each of the nine topic areas discussed in the scoping document there are a series of questions that are designed to initiate, but not limit, the debate on the practicability of adopting some form of ecosystem based fishery management.

**Dates and Locations of the Meetings**

The dates and locations of the meetings are as follows:

- Monday, September 26, 2005: Clarion Oceanfront, 1601 S. Virginia Dare Trail, Kill Devil Hills, NC 27948.
- Tuesday, September 27, 2005: Comfort Inn, 3100 Arendell Street, Morehead City, NC 28557.
- Wednesday, September 28, 2005: Norfolk Days Inn Airport, 5708 Northampton Blvd., Virginia Beach, VA 23455.
- Monday, October 3, 2005: Crowne Plaza JFK Airport, 151-20 Baisley Blvd., Jamaica, NY 11434.
- Tuesday, October 4, 2005: Southampton Inn, 91 Hill Street, Southampton, NY 11968.
- Thursday, October 6, 2005: Ocean Place Resort, One Ocean Blvd., Long Branch, NJ 07740.
- Tuesday, October 11, 2005: Holiday Inn Select, 480 King Street, Old Town Alexandria, VA 22314.
- Wednesday, October 12, 2005: Princess Royale, 9100 Coastal Highway, Ocean City, MD 21842.
- Thursday, October 13, 2005: Sheraton, 173 Jennifer Road, Annapolis, MD 21401.
- Monday, October 17, 2005: Congress Hall Hotel, 251 Beach Avenue, Cape May, NJ 08204.
- Tuesday, October 18, 2005: University of DE, College of Marine

Studies, Marine Operations Blvd., Lewes, DE 19958.

- Wednesday, October 19, 2005: Best Western Delaware, 260 Chapman Road, Newark, DE 19702.
- Monday, October 24, 2005: Renaissance Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA 19113.

**Special Accommodations**

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jan Saunders (302-674-2331 ext: 18) at the Mid-Atlantic Council office at least 5 days prior to the hearing date.

Dated: September 7, 2005.

**Emily Menashes,**

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

[FR Doc. E5-4969 Filed 9-9-05; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 090705A]

**North Pacific Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Non-Target Species Committee will meet.

**DATES:** The meeting will be held on Thursday, September 22, 2005.

**ADDRESSES:** Two video conference locations have been reserved:

1. 709 W. 9th, Room 401, Federal Building, Juneau, AK, and
  2. Alaska Fishery Science Center, 7600 Sand Point Way NE., Room 2143, Building 4, Seattle, WA.
- Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

**FOR FURTHER INFORMATION CONTACT:** Jane DiCosimo, Council staff, telephone: (907) 271-2809.

**SUPPLEMENTARY INFORMATION:** The committee will meet to review revised draft Rockfish paper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically

identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: September 7, 2005.

#### Emily Menashes,

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

[FR Doc. E5-4968 Filed 9-9-05; 8:45 am]

**BILLING CODE 3510-22-S**

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[I.D. 090705B]

#### Pacific Fishery Management Council; Public Meetings/Workshop

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Groundfish Stock Assessment Review (STAR) Panel for lingcod, the northern portion of the West Coast petrale sole stock, and rebuilding analyses for seven overfished West Coast rockfish stocks will hold a work session which is open to the public.

**DATES:** The lingcod, petrale sole, and rebuilding analyses STAR Panel will meet beginning at 8 a.m., on Monday, September 26, 2005. The meeting will continue through Friday, September 30, 2005 beginning at 8 a.m. every morning. The meeting will end at 5 p.m. each day, or as necessary to complete business.

**ADDRESSES:** The lingcod, petrale sole, and rebuilding analyses STAR Panel meeting will be held in Room 1055 at the National Oceanic and Atmospheric Administration (NOAA) Western Regional Center's Sand Point Facility, 7600 Sand Point Way N.E., Seattle, WA 98115-6349; telephone: (206) 526-6547. Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland,

OR 97220-1384; telephone: 503-820-2280.

**FOR FURTHER INFORMATION CONTACT:** Mr. John DeVore, Pacific Fishery Management Council; telephone: 503-820-2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the STAR Panel meeting is to review draft stock assessments for lingcod and the northern portion of the West Coast petrale sole stock; draft rebuilding analyses for bocaccio, canary rockfish, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish; any other pertinent information, work with the Stock Assessment Teams and rebuilding analysis authors to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons. No management actions will be decided by this STAR Panel. The STAR Panel's role will be development of recommendations and reports for consideration by the Council at its November meeting in San Diego, CA.

Although non-emergency issues not contained in the meeting agenda may come before the STAR Panel participants for discussion, those issues may not be the subject of formal STAR Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STAR Panel participants' intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503-820-2280 at least 5 days prior to the meeting date.

Entry to the NOAA Western Regional Center's Sand Point Facility requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NOAA Western Regional Center's Facility, will be issued to non-Federal employees participating in the meeting.

Dated: September 7, 2005.

#### Emily Menashes,

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

[FR Doc. E5-4967 Filed 9-9-05; 8:45 am]

**BILLING CODE 3510-22-S**

### DEPARTMENT OF EDUCATION

#### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 23, 2005.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: September 6, 2005.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision.

*Title:* Section 704 Annual

Performance Report (Parts I and II).

*Abstract:* Section 706(d), 721(b)(3), and 725(c) of the Rehabilitation Act of 1973, as amended (Act) and corresponding program regulations in 34 CFR parts 364, 365, and 366 require centers for independent living, Statewide Independent Living Councils (SILCs) and Designated State Units (DSUs) supported under Parts B and C of Chapter 1 of Title VII of the Act to submit to the Secretary of Education (Secretary) annual performance information and identify training and technical assistance needs.

*Additional Information:* If this collection does not receive special OMB consideration our public would be harmed by a delay in implementing the revised instrument. This would impair Education's ability to discharge its oversight and technical responsibilities by limiting respondents' ability to make the required changes in their information technology and data collection systems.

*Frequency:* Annually.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 391.

*Burden Hours:* 13,685.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2879. When you access the information collection, click on

"Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address [Sheila.Carey@ed.gov](mailto:Sheila.Carey@ed.gov).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-17960 Filed 9-12-05; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION**

**Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 12, 2005.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of the Chief Information

Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 6, 2005.

**Angela C. Arrington,**

*Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.*

**Institute of Education Sciences**

*Type of Review:* Revision.

*Title:* 2006 Field Test for the 2007 National Household Education Surveys Program (NHES:2007).

*Frequency:* One-time.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 2,476.

*Burden Hours:* 483.

*Abstract:* NHES:2005 is a survey of households using random-digit-dialing and computer-assisted telephone interviewing. Three topical surveys are to be conducted in NHES:2007: School Readiness (SR), Parent and Family Involvement in Education (PFI), and Adult Education for Work-Related Reasons (AEWR). The surveys' results will support cross-sectional analyses and the analyses of changes over time.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2812. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address [OCIO\\_RIMG@ed.gov](mailto:OCIO_RIMG@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address [Kathy.Axt@ed.gov](mailto:Kathy.Axt@ed.gov). Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-17961 Filed 9-9-05; 8:45 am]

BILLING CODE 4000-01-P

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## ELECTION ASSISTANCE COMMISSION

### Publication of State Plans Pursuant to the Help America Vote Act

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice.

**SUMMARY:** Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107-252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to the HAVA State plan previously submitted by Virginia.

**DATES:** This notice is effective upon publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Bryan Whitener, Telephone 202-566-3100 or 1-866-747-1471 (toll-free).

*Submit Comments:* Any comments regarding the plans published herewith

should be made in writing to the chief election official of the individual States at the address listed below.

**SUPPLEMENTARY INFORMATION:** On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates.

The submission from Virginia addresses a material change to the administration of their previously submitted State plan, specifically how the State will meet the voting system standards in HAVA section 301(a). The document also provides information on how the State succeeded in carrying out the previous State plan, in accordance with HAVA section 254(a)(12).

Upon the expiration of thirty days from September 12, 2005, Virginia will

be eligible to implement the material change addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC notes that the plan published herein has already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into revising the State plans and encourages further public comment, in writing, to the State election official of the individual States listed below.

### Chief State Election Officials

#### Virginia

Ms. Jean R. Jensen, Secretary, State Board of Elections, 200 North 9th Street, Suite 101, Richmond, VA 23219, Phone: 804-864-8901, Fax: 804-371-0194, E-mail: [HAVA@sbe.virginia.gov](mailto:HAVA@sbe.virginia.gov).

Thank you for your interest in improving the voting process in America.

Dated: September 6, 2005.

**Gracia M. Hillman,**

*Chair, U.S. Election Assistance Commission.*

BILLING CODE 6820-KF-P



COMMONWEALTH OF VIRGINIA  
STATE BOARD OF ELECTIONS

Michael G. Brown  
Chairman

Barbara Hildenbrand  
Vice Chairman

Jean R. Jensen  
Secretary

Lynda Sharp Anderson  
Deputy Secretary

August 22, 2005

## HAVA Implementation Status

### • Voting Equipment

To date, 86 of Virginia's 90 localities with qualifying precincts have replaced their punchcard or lever machines with HAVA compliant voting systems. This is 95.56% or \$20,184,851.53 in HAVA funds have been paid.

\$2,219,398.85 in HAVA funds have been paid out for 24 of 44 localities without qualifying precincts that have purchased one handicapped accessible machine for every precinct.

Established policies, standards and guidelines for voting equipment security to assist every locality in developing appropriate security procedures to protect voting equipment and ensure the integrity of the electoral process in addition to assisting localities and vendors with the approval of contracts and the purchasing of voting equipment.

Provided training to at least one member of every local electoral board on the development of voting equipment security.

Updated the Voting Equipment Certification Procedures to reflect HAVA requirements as well as the new Voting Equipment Security Policies, Standards, and Guidelines.

Worked with legislators on changes to the Code relating to voting equipment

### • Polling Place Accessibility:

To date, \$143,340 of HAVA funds has been spent to conduct on-site surveys of 1810 of the 2,294 polling places in Virginia. Our contract with the Centers for Independent Living (CILs) requires that the remaining 484 polling place surveys be completed by September 1 2005. As of August 12, 2005, 595 (26.7%) meet accessibility standards.

Virginia has allocated \$1.2million in HAVA and EAD funds to assist localities in making polling places accessible.

### • Provisional Voting

Virginia adopted minor legislative changes in the 2004 session of the General Assembly to include provisions applicable to HAVA (e.g., voter's voting after the polls have closed due to a court order). In addition, the State Board of Elections (SBE) developed and approved comprehensive Provisional Ballot Procedures in order to achieve uniformity in the issuing, tracking, and counting of provisional ballots.

Other efforts include the development of a free-access system. SBE upgraded the phone system to maintain a toll free number, which routes callers to their local registration office. Each provisional voter is provided the number and a code at the time the provisional ballot is cast. The voter then calls the toll free number, enters the assigned code and is transferred to the proper local office where the information on the disposition of provisional ballots is maintained.

### • Voting Information

In 2003 and 2004, Virginia prepared and distributed information to every polling place regarding the date of the election and the hours during which the polls are open along with instructions on how to cast a provisional ballot. We modified existing information on identification requirements to reflect the new requirements and prepared and distributed general information on Federal and State laws regarding prohibitions on fraud and misrepresentation.

### • Computerized Statewide Voter Registration List

In June 2004, Virginia released a Request for Proposal (RFP) for the creation of a HAVA-compliant statewide voter registration system. A contract was awarded on December 29, 2004 to Unisys Corporation. Development

Dear Members of the Commission:

In accordance with section 255 of the Help America Vote Act of 2002 (HAVA), I am pleased to file with the Election Assistance Commission (EAC), for publication in the *Federal Register*, this letter and the following new page that will comprise of the revision of the State Plan of Commonwealth of Virginia for the 2005 Fiscal Year. This new page will constitute the Commonwealth of Virginia's HAVA State Plan for Fiscal Year 2005-2006.

As required by section 254(a)(12) of HAVA, Element 1, as amended, describes the material changes that Virginia has made to the State Plan filed in 2003. Specifically, Element 1 states § 301(4) *Voting Systems Standards Requirements: Use Title III funding to purchase one DRE for every precinct, including central absentee precincts. The amended version states: Use Title III funding to purchase one voting system equipped for individuals with disabilities for every precinct, including central absentee precincts.*

The 2005 Amendments to the State Plan of the Commonwealth of Virginia were developed in accordance with section 255 of HAVA and the requirements for public notice and comment prescribed by section 256 of HAVA.

Attached please find a summary of our accomplishments to date of Virginia's HAVA State Plan filed with the Federal Election Commission on July 31, 2003.

On behalf of the Commonwealth of Virginia, I thank the Commission for its assistance. I look forward to our continued collaboration to improve the administration of elections in Virginia.

Sincerely,

  
Jean R. Jensen  
Secretary

Enclosures

is well underway with a baseline package delivered on July 21, 2005. Customization is now in process with a final deployment to all 134 localities scheduled for mid-December 2005.

- **Voters who register by mail**

In accordance with our State Plan, Virginia adopted legislative changes that meet the HAVA ID requirements for federal elections. We have also incorporated ID verification in the specifications for our new statewide voter registration system. In addition, we completed the modification of the voter registration application to include the mandated questions and statement. Finally, in 2004, Virginia performed a batch match of first time mail registrants against the DMV database and provided post card notices of the new ID requirements to those voters that could not be matched in the database.

- **Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)**

Virginia's State Plan included a provision that the state would hire a full-time UOCAVA Coordinator to act as the single point of contact for all UOCAVA citizens. Virginia did create this position, which the EAC cited as a best practice. The current UOCAVA Coordinator developed procedures that allow UOCAVA citizens to receive ballots by e-mail, if they reside or are stationed outside the continental United States. The coordinator has also developed numerous collaborative relationships with military organizations within the large military population in Virginia to ensure that information is disseminated to the UOCAVA community. Finally, Virginia has made a number of legislative changes that ensure that the UOCAVA citizen will receive all ballots that they are eligible for inclusive of the time span stipulated by HAVA.

- **Election Official Training:**

Provided "Train the Trainer" training to local registrars and electoral board members to improve their training of poll worker.

Approved a pilot program utilizing a web-based online training for poll workers.

Conducted regional based training of local electoral board members.

Will continue to work with localities to ensure timely compliance with HAVA requirements. This will include simplifying and standardize voting equipment instructions for local elections officials for all certified voting systems. The Voting Equipment Manager (HAVA funded position) will make security audits visits to selected localities. Improve web-based information for voters regarding voting systems used in Virginia. A new website will be brought on-line with improved appearance, usability and content in addition to our continued development of public services announcements to educate voter regarding the electoral process, online training of poll workers.

- **Voter Education & Training**

SBE has dedicated approximately \$14-million of it's HAVA funds for voter education and training to develop and implement a number of efforts in the area:

- Produced 500,000 copies of "*The Virginia Easy Voter Guide*" plus 10,000 copies of the same booklet in large print.
- Produced 500,000 copies of a "*Virginia Voter Rights and Responsibilities*" card and 10,000 copies of the same document in large print.
- Produced and aired two Public Services Announcements (PSA) in regional television and radio markets informing voters about voter registration deadlines, absentee balloting, disability access to polling places, targeting the general voting population. We aired a separate PSA in selected markets targeting younger voters on deadlines, absentee balloting, disability access to polling places, targeting the general votine nonulation

**DEPARTMENT OF ENERGY****[Docket No. PP-89-1]****Notice of Public Hearings for the Proposed Bangor Hydro-Electric Company (BHE) Northeast Reliability Interconnect****AGENCY:** Department of Energy.**ACTION:** Notice of public hearings.

**SUMMARY:** The Department of Energy (DOE) announces two public hearings on the "Draft Environmental Impact Statement for the Bangor Hydro-Electric Company (BHE) Northeast Reliability Interconnect" (DOE/EIS-0372). The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality NEPA regulations, 40 CFR parts 1500-1508, and the DOE NEPA regulations, 10 CFR part 1021. The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NOAA Fisheries) are cooperating agencies in the preparation of this Draft EIS.

The proposed DOE action in the Draft EIS is to amend BHE's existing Presidential permit to allow construction along the Modified Consolidated Corridors Route of a single-circuit, 345,000-volt, electric transmission line that would cross the U.S. international border in the vicinity of Baileyville, Maine. DOE has prepared this Draft EIS to evaluate the potential environmental impacts in the United States of the proposed action and the range of reasonable alternatives, including the No Action alternative.

**DATES:** DOE invites interested Members of Congress, state and local governments, other Federal agencies, American Indian tribal governments, organizations, and members of the public to provide comments on the Draft EIS. The public comment period began on August 26, 2005, with the publication of the Notice of Availability of the Draft EIS in the Federal Register by the Environmental Protection Agency and will continue until October 11, 2005. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by that date in preparing the Final EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public hearings are:

1. September 28, 2005, 7 p.m. to 9 p.m., Baileyville, Maine.
2. September 29, 2005, 7 p.m. to 9 p.m., Brewer, Maine.

Requests to speak at a specific public hearing should be received by Dr. Jerry

Pell as indicated in the **ADDRESSES** section below on or before September 21, 2005. Requests to speak may also be made at the time of registration for the hearing(s). However, persons who have submitted advance requests to speak will be given priority if time should be limited during the meeting.

**ADDRESSES:** Requests to speak at the public hearings should be addressed to: Dr. Jerry Pell, Office of Electricity Delivery and Energy Reliability (OE-20), U.S. Department of Energy, Washington, DC 20585, or transmitted by phone: 202-586-3362, facsimile: 202-318-7761, or electronic mail at [Jerry.Pell@hq.doe.gov](mailto:Jerry.Pell@hq.doe.gov). Please be aware that anthrax screening delays conventional mail delivery to DOE.

The locations of the public hearings are:

1. Woodland Elementary School, 23 Fourth Avenue, Baileyville, Maine.
2. Jeff's Catering Banquet & Convention Center, East West Industrial Park, 5 Coffin Avenue, Brewer, Maine.

Copies of the Draft EIS are available in paper format, accompanied by a CD-ROM containing the entire Draft EIS, or as a CD-ROM only. Requests for additional copies in either format should be addressed to Dr. Pell at any of the addresses above. Additionally, the Draft EIS is available on the project Internet Web site at <http://web.ead.anl.gov/interconnecteis>, and also on the DOE NEPA Web site at <http://www.eh.doe.gov/nepa/docs/deis/deis.html>.

Written comments on the Draft EIS may be addressed to Dr. Jerry Pell as indicated in the **ADDRESSES** section of this notice or submitted on the project Web site at <http://web.ead.anl.gov/interconnecteis>.

**FOR FURTHER INFORMATION CONTACT:** For information on the proposed project or to receive a copy of the Draft EIS, contact Dr. Pell as indicated in the **ADDRESSES** section of this notice.

For general information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: 202-586-4600 or leave a message at 800-472-2756; Facsimile: 202-586-7031.

**SUPPLEMENTARY INFORMATION:** Executive Order (E.O.) 10485, as amended by E.O. 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated, or connected at the U.S. international border. The E.O. provides that a Presidential permit may be issued after

a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the environmental impacts of the proposed project pursuant to NEPA, the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE may also consider relevant to the public interest. The regulations implementing the E.O. have been codified at 10 CFR 205.320-205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On January 22, 1996, DOE issued Presidential Permit PP-89 which authorized BHE to construct a single-circuit, 345,000-volt (345-kV) alternating current transmission line that would originate at BHE's Orrington Substation, extend eastward approximately 85 miles (137-km), and cross the U.S.-Canada border near Baileyville, Maine. Before granting the Presidential permit, DOE prepared an EIS which analyzed the environmental impacts of various alternative actions and routes. The preferred alternative in the EIS and in the Record of Decision was to grant a Presidential permit for construction of the transmission line along the Stud Mill Road route. However, the project was never constructed and on September 30, 2003, BHE applied to DOE to amend Presidential Permit PP-89 by allowing construction of the proposed transmission line along a route other than the Stud Mill Road route.

**Alternatives Considered**

The proposed DOE action in the Draft EIS is to amend BHE's existing Presidential permit to allow construction along the Modified Consolidated Corridors Route. DOE has prepared this Draft EIS to evaluate the potential environmental impacts in the United States of the proposed action and the range of reasonable alternatives, including the No Action alternative. Under the No Action alternative, only the previously permitted route (the Stud Mill Road route) could be utilized by BHE for construction of the transmission line. In addition to the Modified Consolidated Corridors Route and the Previously Permitted Route, two other alternative routes are analyzed in

the Draft EIS: the Consolidated Corridors Route, and the MEPCO South Route. DOE also analyzed a rescission alternative under which the existing permit would be rescinded and no international transmission line could be constructed. As indicated in the Draft EIS, DOE has designated the Modified Consolidated Corridors Route as its preferred alternative.

#### Availability of the Draft EIS

DOE has distributed copies of the Draft EIS to appropriate members of Congress, state and local government officials in Maine, American Indian tribal governments, and other Federal agencies, groups, and interested parties. Copies of the document may be obtained by contacting DOE as provided in the ADDRESSES section of this notice. Copies of the Draft EIS are also available for inspection at the locations identified below:

1. Bangor Public Library, 145 Harlow St., Bangor, ME 04401.
2. Brewer Public Library, 24 Union St., Brewer, ME 04412.
3. Calais Free Library, 9 Union St., Calais, ME 04619.
4. Orrington Public Library, 15 School St., Orrington, ME 04474.
5. Princeton Public Library, Main Street, Princeton, ME 04668.
6. Baileyville Public Library, 169 Main Street, Baileyville, ME 04694.

Issued in Washington, DC, on September 6, 2005.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 05-18023 Filed 9-9-05; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[RP05-544-000, et al.]

#### CenterPoint Energy—Mississippi River Transmission Corporation et al.; Notice of Proposed Changes in FERC Gas Tariff

September 2, 2005.

In the matter of: RP05-570-000, RP05-570-000, RP05-575-000, RP05-548-000, RP05-576-000, RP05-541-000, RP05-539-000, RP05-540-000, RP05-542-000, RP05-563-000, RP05-400-001, RP05-547-000, RP05-554-000, RP05-568-000, RP05-562-000, RP05-538-000, RP05-577-000, RP05-545-000, RP05-558-000, RP05-569-000, RP05-557-000, RP05-551-000, RP05-555-000, RP05-455-001, RP05-571-000, RP05-592-000, RP05-572-000, RP05-543-000, RP05-556-000, RP05-561-000, RP05-578-000, RP05-579-000: Chandeuleur Pipe Line

Company, Chandeuleur Pipe Line Company, Colorado Interstate Gas Company, Eastern Shore Natural Gas Company, El Paso Natural Gas Company, Enbridge Pipelines (AlaTenn) L.L.C., Enbridge Pipelines (KPC), Enbridge Pipelines (Midla) L.L.C., Garden Banks Gas Pipeline, L.L.C., Guardian Pipeline, L.L.C., Gulf South Pipeline Company, LP, Kern River Gas Transmission Company, Kinder Morgan Interstate Gas Transmission LLC, KO Transmission Company, Midwestern Gas Transmission Company, Mississippi Canyon Gas Pipeline, LLC, Mojave Pipeline Company, Nautilus Pipeline Company, L.L.C., Northeast Pipeline Corporation, Ozark Gas Transmission, L.L.C., Panther Interstate Pipeline Energy, LLC., Questar Pipeline Company, Questar Southern Trails Pipeline Company, Sabine Pipe Line LLC, Sabine Pipe Line LLC, SCG Pipeline, Inc., Southern Star Central Gas Pipeline, Inc., Stingray Pipeline Company, L.L.C., TransColorado Gas Transmission Company, Viking Gas Transmission Company, Wyoming Interstate Company, Ltd., Young Gas Storage Company, Ltd.

Take notice that the above-referenced pipelines tendered for filing their tariff sheets respectively, pursuant to Section 154.402 of the Commission's regulations, to reflect the Commission's change in the unit rate for the Annual Charge Adjustment (ACA) surcharge to be applied to rates for recovery of 2005 Annual Charges. The proposed effective date of the tariff sheets is October 1, 2005.

The above-referenced pipelines state that the purpose of their filings is to reflect the revised ACA effective for the twelve-month period beginning October 1, 2005. The pipelines further state that their tariff sheets reflect a decrease of \$0.0001 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of \$0.0018 Dth as specified by the Commission in its invoice dated June 30, 2005, for the Annual Charge Billing—Fiscal year 2005.

Due to the large number of pipelines that have filed to comply with the Annual Charge Adjustment Billing, the Commission is issuing this single notice of the filings included in the caption.

Any person desiring to become part in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Intervention, Protest Date:* 5 p.m. eastern time on September 13, 2005.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E5-4956 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2602]

#### Duke Power, a Division of Duke Energy Corporation, Nantahala Area; Notice of Authorization or Continued Project Operation

September 6, 2005.

On July 22, 2003, Duke Power, a division of Duke Energy Corporation, Nantahala Area, licensee for the Dillsboro Project No. 2602, filed an application for subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. The application for subsequent license will be held in abeyance pending Commission processing of a surrender application filed on June 1, 2004. Project No. 2602 is located on the Tuckasee River in Jackson County, North Carolina.

The license for Project No. 2602 was issued for a period ending July 31, 2005. Based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), the licensee is to continue to operate the project in accordance with the terms and conditions of its license until the Commission acts on its application for subsequent license, accepts its surrender application, or takes other appropriate action.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E5-4963 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC05-132-000]

#### Nevada Power Company and GenWest LLC; Notice of Application To Authorize Disposition of Jurisdictional Facilities

September 6, 2005.

Take notice that on August 31, 2005, Nevada Power Company (Nevada Power) and GenWest LLC, submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Nevada Power would acquire a 75 percent ownership interest in the Silverhawk Power Station (the Transaction). The Applicants request confidential treatment of certain portions of the application, including the portions of the Asset Purchase Agreement pursuant to which the Transaction would be consummated.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. eastern time on October 14, 2005.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E5-4957 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER04-230-015, ER01-3155-012, ER01-1385-021 and EL01-45-020]

#### New York Independent System Operator, Inc.; Notice of Filing

September 6, 2005.

Take notice that on August 8, 2005, New York Independent System Operator, Inc., (NYISO) submitted its fourth quarterly report pursuant to the NYISO's commitment in its Request for Rehearing, and the Commission's directive in its Order on Rehearing issued June 24, 2005 in Docket Nos. ER04-230-006, ER01-3155-006, ER01-1385-015, and EL01-45-014.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. eastern time on September 13, 2005.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E5-4960 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC05-130-000]

#### Premcor Inc., Valero Energy Corp.; Notice of Withdrawal

September 6, 2005.

Take notice that on August 31, 2005, Premcor Inc. and Valero Energy Corp., (Applicants) pursuant to Rule 216 of the Commission's Rules of Practice and Procedures, give notice of withdrawal of Application for Disposition of Jurisdictional Assets, submitted on August 19, 2005.

Applicants state that a copy of this letter has been served on each person on the official service list.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. eastern time on September 21, 2005.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5-4966 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL05-38-003]

#### Oklahoma Municipal Power Authority and American Electric Power Service Corporation; Notice of Compliance Filing

September 6, 2005.

Take notice that on August 24, 2005, American Electric Power Service Corporation (AEP) submitted an unexecuted Network Integration Transmission Service Agreement with Oklahoma Municipal Power Authority pursuant to the Order Denying Rehearing and Conditionally Accepting Compliance Filing, Instituting Investigation, and Establishing Refund Effective Date and Hearing and Settlement Judge Procedures issued in *Oklahoma Municipal Power Authority v. American Electric Power Service Corp.*, 112 FERC ¶ 61,107 (2005).

AEP states that copies of the filing were served on parties on the official service list.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. eastern time on September 23, 2005.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5-4958 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

September 6, 2005.

Take notice that the Commission received the following electric rate filings.

*Docket Numbers:* ER02-2227-003, ER02-2229-002, ER03-24-002, ER03-36-003.

*Applicants:* Creed Energy Center, LLC, Goose Haven Energy Center, LLC; Los Esteros Critical Energy Facility, LLC; Calpine Northbrook Energy Marketing, LLC.

*Description:* The above referenced applicants, together, Calpine Entities, submit a joint updated market power analysis.

*Filed Date:* 08/30/2005.

*Accession Number:* 20050902-0009.

*Comment Date:* 5 p.m. eastern time on Tuesday, September 20, 2005.

*Docket Numbers:* ER04-445-012.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp., submits its interim Standard Large Generator Interconnection Procedures.

*Filed Date:* 08/30/2005.

*Accession Number:* 20050902-0010.

*Comment Date:* 5 p.m. eastern time on Tuesday, September 20, 2005.

*Docket Numbers:* ER99-230-009, ER03-762-009, ER03-533-002.

*Applicants:* Alliant Energy Corporate Services, Inc., Alliant Energy Neenah, LLC.

*Description:* Alliant Energy Corporate Services, Inc., on behalf of itself and Alliant Energy Neenah, LLC, makes corrections to their June 30, 2005 filing pertaining to the wholesale power sales for AECs's market based rate.

*Filed Date:* 08/30/2005.

*Accession Number:* 20050902-0011.

*Comment Date:* 5 p.m. eastern time on Tuesday, September 20, 2005.

*Docket Numbers:* ER05-1333-000, ER05-1421-000.

*Applicants:* Southern Company Services, Inc.

*Description:* Southern Company Services, Inc. on behalf of Southern Companies submits revisions to the Large Generator Interconnection Procedures in compliance with Order 2003-C and Order No. 2006, to become effective 8/15/05.

*Filed Date:* 08/15/2005.

*Accession Number:* 20050816-0194.

*Comment Date:* 5 p.m. eastern time on Tuesday, September 06, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
Secretary.

[FR Doc. E5-4955 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 6, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to change project design and capacity.

b. *Project No.:* 10228-038.

c. *Date Filed:* May 5, 2005.

d. *Applicant:* Cannelton Hydroelectric Project, L.P.

e. *Name of Project:* Cannelton.

f. *Location:* The project would be located at the existing Corps of Engineers' Cannelton Locks and Dam on the Ohio River, Hancock County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contacts:* Mr. James Price, P.O. Box 5550, Aiken, SC 29804, (803) 642-2749.

i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at (202) 502-8759, or e-mail address: [mfayyad@ferc.gov](mailto:mfayyad@ferc.gov)

j. *Deadline for filing comments and or motions:* October 7, 2005.

k. *Description of Filing:* The City of Marion, Kentucky, and Smithland Hydroelectric Partners filed an application to modify the configuration of the Smithland Lock and Dam Project. The licensees propose to install three generating units (as was originally authorized) instead of the currently authorized Hydromatrix design that consists of 140 small generating units. The proposed design would change the installed capacity from 79.8 MW to 71 MW, and the hydraulic capacity from 55,200 cfs to 49,000 cfs.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene—*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. *Filing and Service of Responsive Documents—*Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments—*Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. *Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.*

**Magalie R. Salas,**  
Secretary.

[FR Doc. E5-4961 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

September 6, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent license.

b. *Project No.:* 1051-012.

c. *Date Filed:* August 29, 2005.

d. *Applicant:* Alaska Power & Telephone Company (AP&T).

e. *Name of Project:* Skagway-Dewey Lakes Project.

f. *Location*: On Pullen, Dewey, Reid, Icy, and Snyder Creeks within the city limits of Skagway, Alaska. The project does not utilize any Federal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Bob Grimm, AP&T, P.O. Box 3222, Port Townsend, Washington 98368, (360) 385-1733, ext. 120.

i. *FERC Contact*: Alan Mitchnick, (202) 502-6074 or

[alan.mitchnick@ferc.gov](mailto:alan.mitchnick@ferc.gov).

j. *Cooperating Agencies*: We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status*: October 28, 2005.

*All Documents (Original and Eight Copies) Should Be Filed With*: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. *Project Description*: Water from Reid Falls, Icy Creek, and Snyder Creek is diverted to Lower Dewey Lake, which in turn, flows into Dewey reservoir. The project withdraws water from Dewey reservoir to supply the powerhouse. Existing project features include: the 26-foot-long, 8-foot-high Reid Falls diversion dam that diverts water into a 14-inch-diameter, 1,280-foot-long steel pipeline running to Icy Creek; the 102-foot-long, 5-foot-high Icy Lake dam impounding the 3.4-acre Icy Lake; the 30-foot-long and 3-foot-high Snyder Creek diversion dam that diverts water from Snyder Creek into a diversion channel that conveys water to Lower Dewey Lake; the 629-foot-long, 28-foot-high Lower Dewey Lake dam, impounding the 32.8-acre Lower Dewey Lake; the 132-foot-long, 30-foot-high, Dewey reservoir dam, impounding 2.7 acres; a 300-foot-long canal running between Lower Dewey Lake and Dewey reservoir; three penstocks that run from the Dewey reservoir dam about 1,850 feet to the project's powerhouse that sits adjacent to Pullen Creek within the City of Skagway; and a powerhouse containing four turbines with a total installed capacity of 943 kilowatts. No changes to the project are proposed.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Alaska State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule and Final Amendments*: The application will be processed according to the following

Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if needed)  
Issue Acceptance letter—October 2005  
Issue Scoping Document for comments—November 2005  
Request Additional Information (if needed)—January 2005  
Notice of application is ready for environmental analysis—April 2006  
Notice of the availability of the EA—September 2006  
Ready for Commission's decision on the application—December 2006

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5-4962 Filed 9-9-05; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

September 6, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of license to change project design and capacity.

b. *Project No.*: 6641-067.

c. *Date Filed*: May 3, 2005.

d. *Applicant*: City of Marion, Kentucky, and Smithland Hydroelectric Partners.

e. *Name of Project*: Smithland Lock and Dam Project.

f. *Location*: The Project is located on the Ohio River in Livingston County, Kentucky. The project will affect federal lands at the U.S. Army Corps of Engineers' Smithland Lock and Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact*: Mr. James Price, P.O. Box 5550, Aiken, SC 29804, (803) 642-2749.

i. *FERC Contact*: Any questions on this notice should be addressed to Mohamad Fayyad at (202) 502-8759 or [mfayyad@ferc.gov](mailto:mfayyad@ferc.gov).

j. *Deadline for filing comments and/or motions*: October 7, 2005.

k. *Description of Filing*: The City of Marion, Kentucky, and Smithland Hydroelectric Partners filed an

application to modify the configuration of the Smithland Lock and Dam Project. The licensees propose to install three generating units (as was originally authorized) instead of the currently authorized Hydromatrix design that consists of 170 small generating units. The proposed design would change the installed capacity from 83 MW to 66 MW, and the hydraulic capacity from 63,500 cfs to 48,000 cfs.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene—*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents—*Any filings must bear in all capital letters the title

"COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments—*Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. *Comments, protests and interventions* may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E5-4964 Filed 9-9-05; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RM98-1-000]

**Records Governing Off-the Record Communications; Public Notice**

September 6, 2005.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant

to the merits of a contested proceeding, to deliver to the Secretary, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary (FERRIS) link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket No.	Date received	Presenter or requester
<b>Prohibited:</b>		
1. CP05-32-000 .....	8-30-05	Lee Geil
2. CP05-32-000 .....	8-31-05	Lee Geil
3. EL04-412-000 .....	8-30-05	Denise Rogers
ER03-563-000 .....		
4. Project No. 2984-042 .....	8-30-05	Robert L. Adam
<b>Exempt:</b>		

Docket No.	Date received	Presenter or requester
1. CP05-83-000 .....	8-30-05	Laura Turner
2. EL04-412-000 .....	8-30-05	Jeffrey K. Jordan
ER03-563-000		
3. Project No. 459-128 .....	8-30-05	Alan Creamer
4. Project No. 1971-000 .....	9-1-05	Craig A. Jones
5. Project No. 2692-032 .....	9-1-05	Donley Hill

Magalie R. Salas,

Secretary.

[FR Doc. E5-4965 Filed 9-9-05; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[SFUND-2005-0008, FRL-7967-3]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Emergency Planning and Release Notification Requirements (EPCRA Sections 302, 303, and 304); EPA ICR Number 1395.06, OMB Control Number 2050-0092

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before November 14, 2005.

**ADDRESSES:** Submit your comments, referencing docket ID number SFUND-2005-0008, to EPA online using EDOCKET (our preferred method), by e-mail to [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-564-8019; fax number: 202-564-2625; e-mail address: [jacob.sicy@epa.gov](mailto:jacob.sicy@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number SFUND-2005-0008, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Superfund Docket is (202) 566-0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to <http://www.epa.gov/edocket>.

**Affected entities:** Entities potentially affected by this action are those which have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR part 355, Appendix A and those which have a release of any of the EHS above a reportable quantity. Entities more likely to be affected by this action may include chemical manufacturers, non-chemical manufacturers, retailers, petroleum refineries, utilities, etc.

**Title:** Emergency Planning and Release Notification Requirements (EPCRA sections 302, 303, and 304)

**Abstract:** The authority for these requirements is sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their state emergency response commission (SERC) that the facility is subject to emergency planning. This activity has been completed; this ICR covers only new facilities that are subject to this requirement. Section 303 requires the local emergency planning committees (LEPCs) to prepare emergency plans for facilities that are subject to section 302. This activity has been also completed; this ICR only covers any updates needed for these emergency response plans. Section 304 requires facilities to report to SERCs and LEPCs releases in excess of the reportable quantities listed for each extremely hazardous substance (EHS). This ICR also covers the notification and the written follow-up required under this section.

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

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Burden Statement:** The average reporting burden for emergency planning under 40 CFR 355.30 is 16.15 hours for new facilities and 1.50 hours for existing facilities. For new facilities, this burden includes the time required to read and understand the regulations, to determine reporting status, notify the SERC that the facility is subject to emergency planning, designate a facility representative and otherwise participate in initial planning activities and provide information to the LEPC for planning purposes (11 hours). For a limited number of existing facilities, there may be a burden to inform the LEPC of any changes at the facility that may affect emergency planning (1.50 hours). The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are no recordkeeping requirements for facilities under EPCRA Sections 302–304. The total burden to facilities over three years is 264,560 hours at a cost of \$8.8 million.

The average burden for emergency planning activities is 21 hours per plan for LEPCs, and 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual recordkeeping burden of 10 hours. The total burden to LEPC and SERC over three years is 372,820 hours at a cost of \$9.5 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 2, 2005.

**Deborah Y. Dietrich,**

*Director, Office of Emergency Management.*

[FR Doc. 05–18022 Filed 9–9–05; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0124; FRL–7738–2]

### 1,3-Dichloropropene Risk Assessment; Notice of Availability; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of July 13, 2005, concerning the availability of EPA's human health risk assessment and related documents for the fumigant 1,3-dichloropropene (1,3-D), which is commonly known as telone. This document is extending the comment period for 30 days, from September 12, 2005, to October 12, 2005.

**DATES:** Comments must be received on or before October 12, 2005.

**ADDRESSES:** Comments, identified by docket identification (ID) number OPP–2005–0124, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the July 13, 2005 **Federal Register** document.

**FOR FURTHER INFORMATION CONTACT:** Diane Sherman, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0128; fax number: (703) 308–8041; e-mail address: [sherman.diane@epa.gov](mailto:sherman.diane@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

The Agency included in the July 13, 2005 **Federal Register** document a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Copies of this Document and Other Related Information?

1. **Docket.** EPA has established an official public docket for this action under docket ID number OPP–2005–0124. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. **Electronic access.** You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket ID number.

###### C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the July 13, 2005 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of July 13, 2005 (70 FR 40342) (FRL–7221–9). In that document, EPA made available the human health risk assessment for the soil fumigant 1,3-D, which is commonly known as telone. A soil fumigant, 1,3-D is applied to control parasitic root-knot nematodes

and certain pests and diseases in soil prior to the planting of a variety of food and feed crops including vegetable crops, field crops, fruit and nut crops, and nursery crops. 1,3-D is also registered for use on golf courses and there are proposed uses for turf farms and post-plant in established vineyards. 1,3-D is also a restricted use pesticide and as such can only be applied by certified applicators or those under the supervision of a certified applicator. End-use product formulations containing 1,3-D may be applied through drip irrigation or by injection below the soil surface either in rows or broadcast across an area. EPA is hereby extending the comment period, which was set to end on September 12, 2005, to October 12, 2005. The Agency received a request from the Society of American Florists and is therefore, granting the extension based on the volume and complexity of the documents being reviewed.

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 7, 2005.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 05-18074 Filed 9-8-05; 2:30 pm]

BILLING CODE 6560-50-S

#### ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0128; FRL-7738-3]

#### Dazomet Risk Assessment; Notice of Availability; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the *Federal Register* of July 13, 2005, concerning the availability of EPA's human health risk assessment and related documents for the fumigant dazomet. This document is extending the comment period for 30 days, from September 12, 2005, to October 12, 2005.

**DATES:** Comments must be received on or before October 12, 2005.

**ADDRESSES:** Comments, identified by docket identification (ID) number OPP-2005-0128, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of

the **SUPPLEMENTARY INFORMATION** of the July 13, 2005 *Federal Register* document.

**FOR FURTHER INFORMATION CONTACT:** Dirk Helder, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-4610; fax number: (703) 308-8041; e-mail address: [helder.dirk@epa.gov](mailto:helder.dirk@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

The Agency included in the July 13, 2005 *Federal Register* document a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0128. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this *Federal Register* document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

#### C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the July 13, 2005 *Federal Register* document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### II. What Action is EPA Taking?

This document extends the public comment period established in the *Federal Register* of July 13, 2005 (70 FR 40339) (FRL-7721-8). In that document, EPA made available the human health risk assessment for dazomet. It is used as a non-selective, pre-plant soil fumigant with fungicidal, herbicidal, insecticidal, and nematocidal properties. Dazomet is converted to methyl isothiocyanate (MITC) in the environment, particularly in the presence of moisture (such as in soil after application). It is MITC that performs the fumigating activity. EPA is hereby extending the comment period, which was set to end on September 12, 2005, to October 12, 2005. The Agency received a request from the registrants Certis USA and the Society of American Florists and is therefore, granting the extension based on the volume and complexity of the documents being reviewed.

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 8, 2005.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 05-18075 Filed 9-8-05; 2:30 pm]

BILLING CODE 6560-50-S

#### ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0125; FRL-7738-4]

#### Metam Sodium Risk Assessment; Notice of Availability; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the *Federal Register* of July 13, 2005, concerning the availability of EPA's human health risk assessment and related documents for the fumigant metam sodium. This document is

extending the comment period for 30 days, from September 12, 2005, to October 12, 2005.

**DATES:** Comments must be received on or before October 12, 2005.

**ADDRESSES:** Comments, identified by docket identification (ID) number OPP-2005-0125 may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the July 13, 2005 **Federal Register** document.

**FOR FURTHER INFORMATION CONTACT:** Dirk Helder, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-4610; fax number: (703) 308-8041; e-mail address: [helder.dirk@epa.gov](mailto:helder.dirk@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

The Agency included in the July 13, 2005 **Federal Register** document a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0125. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

*C. How and to Whom Do I Submit Comments?*

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the July 13, 2005 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**II. What Action is EPA Taking?**

This document extends the public comment period established in the **Federal Register** of July 13, 2005 (70 FR 40333) (FRL-7722-1). In that document, EPA made available the human health risk assessment for metam sodium and metam potassium. They are non-selective pre-plant soil fumigants with fungicidal, herbicidal, insecticidal, and nematocidal properties. Metam sodium is one of the most widely used agricultural pesticides in the U.S. and is presently registered on a wide variety of crop groups including: root and tuber vegetables; bulb vegetables; leafy vegetables; Brassica (cole) leafy vegetables; legume vegetables; fruiting vegetables; cucurbit vegetables; citrus fruits; pome fruits; stone fruits; berries; tree nuts; cereal grains; nongrass livestock feeds; and herbs and spices. Metam sodium may be applied to plant beds as a soil drench treatment. It may also be applied to field or row crops during pre-plant and postharvest stages via chemigation, soil broadcast treatment, soil band treatment, soil-incorporated treatment, and soil-injection treatment. An estimated 51 million pounds of metam sodium is applied annually. Lesser amounts of metam potassium are used in the U.S.; unless further qualified or specified, use of the term "metam sodium" should be assumed to also include "metam potassium." EPA is hereby extending the comment period, which was set to end on September 12, 2005, to October 12, 2005. The Agency received a request from the Society of American Florists and is therefore, granting the extension based on the volume and complexity of the documents to be reviewed.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: September 7, 2005.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 05-18076 Filed 9-8-05; 2:30 pm]

**BILLING CODE 6560-50-S**

**FEDERAL HOUSING FINANCE BOARD**

**Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors**

**TIME AND DATE:** The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, September 14, 2005. The closed portion of the meeting will follow immediately the open portion of the meeting.

**PLACE:** Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

**STATUS:** The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED AT THE OPEN PORTION:**

*Fiscal Year 2006 Budget.* The Board of Directors will consider a resolution adopting the Finance Board's fiscal year 2006 budget.

*Annual Performance Budget for Fiscal Year 2006.* The Government Performance and Results Act of 1993 and Office of Management and Budget Circular A-11 require agencies to produce an Annual Performance Budget that links performance goals with costs for achieving a target level of performance. The Board of Directors will consider a resolution adopting a Fiscal Year 2006 Annual Performance Budget for the Finance Board.

**MATTER TO BE CONSIDERED AT THE CLOSED PORTION:**

*Periodic Update of Examination Program Development and Supervisory Findings.*

**CONTACT PERSON FOR MORE INFORMATION:** Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202-408-2876 or [williss@fhfb.gov](mailto:williss@fhfb.gov).

By the Federal Housing Finance Board.

Dated: September 8, 2005.

**Neil R. Crowley,**

*Deputy General Counsel.*

[FR Doc. 05-18086 Filed 9-8-05; 12:26 pm]

**BILLING CODE 6725-01-P**

**FEDERAL RESERVE SYSTEM****Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 26, 2005.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Mark Tolliver and Catherine Averill*, both of Orland Park, Illinois; to acquire voting shares of Admiral Family Banks, Inc., Alsip, Illinois, and thereby indirectly acquire voting shares of Federated Bank, Onarga, Illinois.

Board of Governors of the Federal Reserve System, September 6, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05-17957 Filed 9-9-05; 8:45 am]

**BILLING CODE 6210-01-S**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 6, 2005.

**A. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *German American Bancorp*, Jasper, Indiana; to acquire 9.8 percent of the voting shares of Eclipse Bank, Inc., Louisville, Kentucky (in organization).

**B. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Bridgewater Bancshares, Inc.*, Bloomington, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Bridgewater Bank, Bloomington, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, September 6, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05-17956 Filed 9-9-05; 8:45 am]

**BILLING CODE 6210-01-S**

**GENERAL SERVICES ADMINISTRATION****Federal Management Regulation; Motor Vehicle Management; Notice of GSA Bulletin FMR B-9**

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of a bulletin.

**SUMMARY:** This notice announces GSA Federal Management Regulation (FMR) Bulletin B-9. This bulletin provides guidance to Executive Branch agencies (other Federal entities are encouraged to follow this guidance) on the development and maintenance of

documented structured vehicle allocation methodologies for agency fleets, *i.e.*, vehicles that are agency-owned, leased from the General Services Administration (GSA), or commercially-leased. Agency adherence to such a methodology will help to ensure that agency vehicle fleets are not over-costly, are correctly sized in terms of numbers, and are the appropriate type for accomplishing agency missions. GSA Bulletin FMRB-9 may be found at [www.gsa.gov/bulletin](http://www.gsa.gov/bulletin).

**DATES:** The bulletin announced in this notice is effective August 26, 2005.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501-1777. Please cite Bulletin FMRB-9.

**SUPPLEMENTARY INFORMATION:****A. Background**

In April 2002, the Office of Management and Budget (OMB) requested that all Executive Branch agencies take a closer look at their fleet management operations, particularly the size of their fleets. In coordination with OMB, information was collected from the agencies using a survey developed by the Federal Fleet Policy Council (FEDFLEET) and GSA's Vehicle Management Policy Division. The results of the survey indicated a number of deficiencies in the fleet management operations of the agencies. An interagency working group of FEDFLEET members recommended corrective actions, including the establishment, within each agency, of a documented structured vehicle allocation methodology to identify the optimal allocation of the agency vehicles in terms of number and configuration of those vehicles. The need for such a methodology was further validated in a May 2004 Government Accountability Office report on the acquisition and management of Federal motor vehicles.

The guidance provided in FMR Bulletin B-9 includes a description of the methodology and resultant optimal vehicle allocation, an example of the methodology both in narrative and in standardized format, how the methodology and resultant optimal vehicle allocation should be recorded, the sources for development of the methodology and resultant optimal vehicle allocation, what actions Federal executive agencies should take as a result of the bulletin, and a contact for further information and/or comments.

**B. Procedures**

Bulletins regarding motor vehicle management are located on the Internet at [www.gsa.gov/bulletins](http://www.gsa.gov/bulletins) as Federal Management Regulation (FMR) bulletins.

Dated: September 2, 2005.

**Thomas J. Horan,**

*Deputy Director.*

[FR Doc. 05-17952 Filed 9-9-05; 8:45 am]

**BILLING CODE 6820-14-S**

**GENERAL SERVICES ADMINISTRATION****Federal Travel Regulation; Notice of GSA Bulletin FTR 05-06**

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of a bulletin.

**SUMMARY:** This notice announces Federal Travel Regulation (FTR) GSA Bulletin FTR 05-06. This Bulletin informs agencies that certain provisions of the FTR governing the authorization of actual subsistence expenses for official travel (both TDY and relocation) are temporarily waived as a result of Hurricane Katrina, because it is expected that finding lodging facilities and/or adequate meals may be difficult, and distances involved may be great resulting in increased costs for per diem expenses. GSA Bulletin FTR 05-06 may be found at [www.gsa.gov/bulletins](http://www.gsa.gov/bulletins).

**DATES:** The bulletin announced in this notice is effective September 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501-1777. Please cite GSA Bulletin FTR 05-06.

**SUPPLEMENTARY INFORMATION:****A. Background**

As a result of the catastrophic destruction caused by Hurricane Katrina, agencies should consider delaying all non-essential TDY and relocation to the affected locations for a period of 90 days. This is especially important with relocation travel because the 120-day maximum for TQSE cannot be extended due to statutory restrictions. While in the past, GSA has limited application of such waivers to Presidentially Declared Disaster Areas, in the case of Hurricane Katrina, the widespread devastation coupled with the extensive evacuation of urban areas means that we cannot effectively

determine the extent to which the ability to secure lodgings will be compromised. In this case, we are stating that each agency may determine whether this Bulletin applies to travel which is impacted by Hurricane Katrina.

**B. Procedures**

Bulletins regarding Federal travel vehicle management are located on the Internet at [www.gsa.gov/bulletins](http://www.gsa.gov/bulletins) as Federal Travel Regulation (FTR) bulletins.

Dated: September 2, 2005.

**Thomas J. Horan,**

*Deputy Director.*

[FR Doc. 05-18021 Filed 9-9-05; 8:45 am]

**BILLING CODE 6820-14-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Administration on Aging 2005 White House Conference on Aging**

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Notice of selection of individuals to serve as At-Large Delegates to the 2005 White House Conference on Aging (WHCoA).

**SUMMARY:** The Policy Committee of the 2005 White House Conference on Aging (WHCoA) announces the selection of At-Large Delegates to attend the 2005 WHCoA from December 11 through 14, 2005.

**DATES:** The meeting will be held from Sunday, December 11, 2005 to Wednesday, December 14, 2005.

**ADDRESSES:** The meeting will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Scott Nystrom, Executive Director, WHCoA, at (301) 443-2511, or e-mail at [Scott.Nystrom@whcoa.gov](mailto:Scott.Nystrom@whcoa.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106-501, November 2000), the WHCoA Policy Committee announces the selection of At-Large Delegates to the 2005 WHCoA. Previously, Governors of all 50 States, the U.S. Territories, the Commonwealth of Puerto Rico, and the District of Columbia, Members of the 109th Congress, and the National Congress of American Indians selected the majority of delegate representatives to the 2005 WHCoA. The Policy Committee has tried to ensure that, with the selection of these At-Large Delegates and as mandated by statute, designated delegates represent a broad cross section

of the U.S. population so that concerns and issues of current as well as future seniors receive appropriate attention.

All delegates will vote on resolutions and develop implementation strategies to be presented to the President and Congress to help guide national aging policies for the next decade and beyond. A complete list of all delegates can be found on the WHCoA web site at <http://www.whcoa.gov>.

Dated: September 7, 2005.

**Edwin L. Walker,**

*Deputy Assistant Secretary for Policy and Programs.*

[FR Doc. 05-18035 Filed 9-9-05; 8:45 am]

**BILLING CODE 4154-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. 2005N-0218]

**Vision 2006—A Conversation With the American Public; Notice of Public Meetings on Specific Food and Drug Administration Issues; Notice of Postponement of Meeting**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) previously announced three public meetings entitled "Vision 2006—A Conversation With the American Public." These meetings are a forum where consumers can interact directly with FDA's leadership to discuss issues of public interest. Due to our need to focus on Hurricane Katrina relief efforts, we are postponing the meeting that was scheduled on September 13, 2005 in Miami, FL. We will reschedule the Miami meeting at a later date.

**DATES:** See table 1 of the **SUPPLEMENTARY INFORMATION** section of this document for revised meeting dates and times.

**ADDRESSES:** See table 1 of the **SUPPLEMENTARY INFORMATION** section of this document for meeting locations.

**FOR FURTHER INFORMATION CONTACT:**

*For information regarding this document:* Philip L. Chao, Food and Drug Administration (HF-23), 5600 Fishers Lane, Rockville, MD 20857, 301-827-0587, FAX: 301 827-4774, e-mail: [philip.chao@fda.hhs.gov](mailto:philip.chao@fda.hhs.gov).

*For information regarding registration:* Isabelle Howes, Graduate School, U.S. Department of Agriculture, 490 L'Enfant Plaza, Promenade Level, suite 710, Washington, DC 20024, 202-314-

4713, FAX: 202-479-6801, e-mail: [Isabelle\\_Howes@grad.usda.gov](mailto:Isabelle_Howes@grad.usda.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 16, 2005 (70 FR 48160), we announced a series of public meetings entitled "Vision 2006—Conversation with the American Public." The meetings would be held in three cities, Miami, FL, Boston, MA, and Phoenix, AZ, and they would be an open forum where consumers could interact with FDA's leadership. The meetings would also be an opportunity

for FDA to update the public on current agency programs, engage the public in discussions, and obtain consumer input on specific issues.

On August 29, 2005, Hurricane Katrina hit several states bordering the Gulf of Mexico, causing massive flooding and devastation. The Secretary of Health and Human Services, Michael O. Levitt, subsequently declared a public health emergency to exist in the States of Florida, Alabama, Louisiana, Mississippi, and Texas, and FDA has been working on relief efforts. Given our

need to focus our attention on those relief efforts, we are postponing the meeting that was originally scheduled for Miami, FL, on September 13, 2005. We will reschedule that meeting at a later date, and we are contacting persons who have already registered for the Miami meeting to inform them that the meeting has been postponed.

The meeting dates for the Boston, MA, and Phoenix, AZ, locations remain the same.

The revised meeting dates, times, and locations are as follows:

TABLE 1.—MEETING DATES, TIMES, AND LOCATIONS

Location	Meeting Site Address	Meeting Date and Time
Boston, MA	Boston Marriott Cambridge, 2 Cambridge Center (Broadway and 3d St.), Cambridge, MA 02142	November 2, 2005, 10 a.m. to 4 p.m.
Miami, FL	Site to be determined at a later date	POSTPONED—We will reschedule this meeting at a later date
Phoenix, AZ	Phoenix Airport Marriott, 1101 North 44th St., Phoenix, AZ 85008	November 30, 2005, 10 a.m. to 4 p.m.

Dated: September 7, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05-18069 Filed 9-8-05; 10:59 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

#### Proposed Project: National Resource and Training Center on Homelessness and Mental Illness—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) and the Health Resources and Services Administration (HRSA) will fund an evaluation of the Policy Academies on Chronic Homelessness held in 2002, 2003, and 2004. These Policy Academies were sponsored by the U.S. Department of Human Services (HHS) in partnership with the U.S. Department of Veterans Affairs, U.S. Department of Labor and the U.S. Department of Housing and Urban Development. The Policy Academies were 3-4 day meetings designed to help teams of State, Territory and local policymakers develop Action Plans intended to improve access to mainstream services for people who are homeless.

This evaluation will assess the effectiveness of the Policy Academies in helping States and Territories address the problem of chronic homelessness. This evaluation has been conceptualized in two parts. The process evaluation will focus on the activities related to conducting the Policy Academies. The process evaluation interviews will focus on: (1)

How the Policy Academy concept was developed, (2) how the Federal Partners implemented the Policy Academies, (3) what factors influenced the effectiveness of each step of the intervention (*i.e.*, pre-Academy site visits, Policy Academy meetings, and post-Academy technical assistance), (4) what changes in the Policy Academy process occurred over time, (5) what challenges/barriers Federal Partners faced in the development and implementation of the Policy Academies, and (6) how future Policy Academies could be improved to better meet the needs of States and Territories. The process evaluation will include all 45 States and Territories that participated in one of the Policy Academies on Chronic Homelessness, as well as the three Pacific Territories (American Samoa, Commonwealth of the Northern Marianas Islands, and Guam,) that participated in a special series of Policy Academies on Homelessness held in American Samoa and Guam.

The second part, the outcome evaluation, will assess how successful State, Territory, and local policymakers have been in implementing the Action Plans that were developed at the Policy Academies. The outcome evaluation interviews will focus on: (1) How States and Territories put together their Policy Academy teams, (2) the content and overall quality of the Action Plans these teams developed, (3) to what extent States and Territories have been able to increase access to coordinated housing

and mainstream services for persons experiencing homelessness, (4) what challenges/barriers States and Territories faced in trying to achieve short- and long-term goals, and (5) to what extent relationships among the Governor's office, legislators, key program administrators, and public and private stakeholders were created or strengthened.

In order to reduce burden on informants, the outcome evaluation will focus on a sample of States and

Territories (the 19 States and Territories participating in the last two Policy Academies on Chronic Homelessness and the three Pacific Territories).

Data collection will be conducted over a 12-month period and will include both telephone interviews and site visits. Data collection instruments are semi-structured and will be administered by trained evaluation staff. Telephone interviews will be conducted with state team leaders and other team members. During site visits, in-person

interviews will be conducted with team leaders, other team members, and other stakeholders. Both telephone and in-person interview protocols have been adapted to reflect the slightly different Policy Academy process used in the Pacific Territories and to reflect the different needs, funding sources, resources, and service systems in these territories.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/ response (hrs)	Annual burden (hrs)
<b>Telephone Interviews (Process Evaluation)</b>				
Team Leader Interview .....	*80	1	2	160
Other Team Member Interview .....	64	1	1.5	96
<b>In-Person Interviews (Outcome Evaluation)</b>				
Team Leader Interview .....	*40	1	2	80
Other Team Member Interview .....	154	1	1.5	231
Other Stakeholder Interview .....	110	1	1.5	165
Total Annual .....	448	.....	.....	732

\*Some States and Territories have more than one team leader.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 71-1045, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 2, 2005.

**Anna Marsh,**

*Executive Officer, SAMHSA.*

[FR Doc. 05-17983 Filed 9-9-05; 8:45 am]

**BILLING CODE 4162-20-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Customs and Border Protection**

**Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC)**

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the date, time, and location for the third meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC), and the expected agenda for its consideration.

**DATES:** The next meeting of the COAC will be held on Thursday, October 6, 2005, 9 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held at the Crowne Plaza Redondo Beach & Marina Hotel, 300 North Harbor Drive, Redondo Beach, CA 90277, Phone: 310-318-8888; the meeting is in the "Seascope" room of this hotel.

**FOR FURTHER INFORMATION CONTACT:** Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504.

**SUPPLEMENTARY INFORMATION:** The third meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will be held at the date, time and location specified above. This notice announces the expected agenda for that meeting. This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice preferably by 2 p.m. e.s.t. on Monday, October 3, 2005, to Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504.

*Information on Services for Individuals With Disabilities:* For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504, as soon as possible.

**Draft Agenda**

The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

1. Introductory Remarks
2. World Customs Organization (WCO) Security Framework/Implementation
  - A. Adoption of the Framework—June 2005
  - B. Creation of the Private Sector Consultative Group
3. Continuity Planning
  - A. Homeland Security Presidential Directive (HSPD) 13 (White House Release)
  - B. Coordination of Planning Groups (National Maritime Security Advisory Committee (NMSAC), etc)
4. Security Subcommittee—Customs-Trade Partnership Against Terrorism (C-TPAT)
  - A. Carrier Criteria
  - B. Benefits Update
  - C. Automation Update

5. Update on Infrastructure Issues
6. Secure Freight
7. Updates from CBP
  - A. Textiles & Apparel Entry Processing—Import Requirements
  - B. Container Seals Regulatory Status
  - C. International Trade Data Systems
  - D. Update on ACE
8. Update from COAC
  - A. Broker Confidentiality
  - B. Other
9. New Action Items
  - A. Next Committee Meeting—Washington DC (December)
  - B. Other

Dated: September 2, 2005.

**Elaine Dezenski,**

*Acting Assistant Secretary, Border and Transportation Security Policy and Planning.*

[FR Doc. 05-17953 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-06-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1605-DR]

#### Alabama; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA-1605-DR), dated August 29, 2005, and related determinations.

**EFFECTIVE DATE:** August 29, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 29, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from Hurricane Katrina on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs. Federal funding for debris removal will remain at 75 percent.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Baldwin, Mobile, and Washington Counties for Individual Assistance.

Baldwin, Clarke, Choctaw, Mobile, Sumter, and Washington Counties for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis

Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05-18000 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1605-DR]

#### Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Alabama (FEMA-1605-DR), dated August 29, 2005, and related determinations.

**EFFECTIVE DATE:** September 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 1, 2005, the President amended the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from Hurricane Katrina on August 29, 2005, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act).

Therefore, I amend my declaration of August 29, 2005, to authorize Federal funds

for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100 percent of total eligible costs, for a 60-day period retroactive to the date of the major disaster declaration.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify Governor Riley and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05-18001 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-3215-EM]

#### Arkansas; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Arkansas (FEMA-3215-EM), dated September 2, 2005, and related determinations.

**EFFECTIVE DATE:** September 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency

(FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

This action terminates my appointment of Gary Jones as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05-18002 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1595-DR]

#### Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida (FEMA-1595-DR), dated July 10, 2005, and related determinations.

**EFFECTIVE DATE:** August 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this declared disaster is now July 7, 2005, through and including July 20, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05-17992 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1602-DR]

#### Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Florida (FEMA-1602-DR), dated August 28, 2005, and related determinations.

**EFFECTIVE DATE:** September 4, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 28, 2005:

Bay, Escambia, Gulf, and Santa Rosa Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05-17993 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1603-DR]

#### Louisiana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-1603-DR), dated August 29, 2005, and related determinations.

**EFFECTIVE DATE:** August 29, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 29, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas; and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such

unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs. Federal funding for debris removal will remain at 75 percent.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana for Individual Assistance.

The parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.

The parishes of Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, Desoto, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, and Winn for Public Assistance Category B (emergency protective measures), including direct Federal assistance, will be provided at 100 percent of the total eligible costs.

The parishes of St. Mary, St. Tammany, and Ouachita in the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05-17994 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1603-DR]

#### Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Louisiana (FEMA-1603-DR), dated August 29, 2005, and related determinations.

**EFFECTIVE DATE:** September 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 1, 2005, the President amended the cost sharing arrangements concerning Federal funds provided

under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of August 29, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100 percent of total eligible costs, for a 60-day period retroactive to the date of the major disaster declaration.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify Governor Blanco and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05–17995 Filed 9–9–05; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA–1603–DR]

#### Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1603–DR), dated August 29, 2005, and related determinations.

**EFFECTIVE DATE:** September 4, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

The parishes of Ascension, Assumption, East Baton Rouge, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, and West Baton Rouge for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05–17997 Filed 9–9–05; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA–1604–DR]

#### Mississippi; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

**DATES:** *Effective Date:* August 29, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 29, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from Hurricane Katrina on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible

costs. For a period of up to 72 hours, you are authorized to fund assistance for emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs. Federal funding for debris removal will remain at 75 percent.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William L. Carwile, III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Amite, Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, Walthall, and Wilkinson Counties for Individual Assistance.

Adams, Amite, Attala, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lee, Lincoln, Lowndes, Madison, Marion, Monroe, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Webster, Wilkinson, and Winston Counties for debris removal and emergency protective measures, including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05-17998 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[FEMA-1604-DR]

#### Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Mississippi (FEMA-1604-DR), dated August 29, 2005, and related determinations.

**EFFECTIVE DATE:** September 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 1, 2005, the President amended the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from Hurricane Katrina on August 29, 2005, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act).

Therefore, I amend my declaration of August 29, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100 percent of total eligible costs, for a 60-day period retroactive to the date of the major disaster declaration.

This adjustment to State and local cost sharing applies only to Public Assistance

costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify Governor Barbour and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05-17999 Filed 9-9-05; 8:45 am]

**BILLING CODE 9110-10-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4639-N-08]

### Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2005-2)

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2005-2). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

**DATES:** The Bidder Information Package (BIP) was made available to qualified bidders on August 10, 2005. Bids for the loans must be submitted on the bid date, which is currently scheduled for September 13, 2005. HUD anticipates that awards will be made on or before September 15, 2005. Closings are expected to take place on September 21, 2005.

**ADDRESSES:** To become a qualified bidder and receive the BIP, prospective

bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at <http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm>. The executed documents must be mailed and faxed to KEMA Advisors, Inc., HUD's transaction specialist for the sale, at 1400 K Street, NW., Suite 950, Washington, DC 20005, Attention: MHLS 2005-2 Sale Coordinator, Fax: 202-464-3047.

**FOR FURTHER INFORMATION CONTACT:**

Myrna Gordon, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone 202-708-2625, extension 3369, or Gregory Bolton, Senior Attorney, Office of Insured Housing, Multifamily Division, Room 9230; telephone 202-708-0614, extension 5245. Hearing- or speech-impaired individuals may call 202-708-4594 (TTY). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** HUD announces its intention to sell in MHLS 2005-2 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised primarily of non-performing mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans or may bid on individual loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

**The Bidding Process**

The BIP will describe in detail the procedure for bidding in MHLS 2005-2. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of \$100,000 or ten percent of the bid price.

HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur on September 21, 2005.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

**Due Diligence Review**

The BIP will describe the due diligence process for reviewing loan files in MHLS 2005-2. Qualified bidders will be able to access loan information remotely via a high speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

**Mortgage Loan Sale Policy**

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2005-2 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Pursuant to the Multifamily Mortgage Sale Regulations, 24 CFR 290.30 *et seq.*, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very low-income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

**Mortgage Loan Sale Procedure**

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified

bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

**Bidder Eligibility**

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2005-2:

1. Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;
2. Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, part 24;
3. Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2005-2;
4. Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2005-2;
5. Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;
6. Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2005-2;
7. Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before August 30, 2005, audited financial statements for 1998 through 2004 for a project securing a Mortgage Loan; and
8. Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before August 30, 2005.

In addition, any entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to August 30, 2005, is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, but may bid on loan pools that do not contain Mortgage Loans that they have serviced or held at any time during the 2-year period prior to August 30, 2005. Also ineligible to bid on any Mortgage Loan are: (a) any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2005–2.

#### Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2005–2, including, but not limited to, the identity of any bidder and their bid price or bid percentage for any pool of loans or individual loan, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2005–2, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

#### Scope of Notice

This notice applies to MHLS 2005–2, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: September 6, 2005.

**Frank L. Davis,**

General Deputy Assistant Secretary for Housing.

[FR Doc. E5–4972 Filed 9–9–05 8:45 am]

BILLING CODE 4210–27–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered and Threatened Wildlife and Plants; 5-Year Review of Eight Southeastern Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 5-year review of the Puerto Rican parrot (*Amazona vittata*), Puerto Rican plain pigeon (*Columba (=Patagioenas) inornata wetmorei*), red-cockaded woodpecker (*Picoides borealis*), Puerto Rican boa (*Epicrates inornatus*), Virgin Islands tree boa (*Epicrates monensis granti*), guajón (*Eleutherodactylus cooki*), *Harrisia portoricensis* (higo chumbo), and *Adiantum vivesii* (no common name), under section 4(c)(2) of the Endangered Species Act of 1973, as amended (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

**DATES:** To allow us adequate time to conduct this review, information submitted for our consideration must be received on or before November 14, 2005. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** Information submitted on the red-cockaded woodpecker should be sent to the Field Supervisor, Clemson Field Office, U.S. Fish and Wildlife Service, 2610 Lehotsky Hall, Box 341003, Clemson, South Carolina 29634. Information on the other seven listed species should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Information received in response to this notice of review will be available for public inspection by appointment, during normal business hours, at the same address in Clemson, South Carolina, and at Cabo Rojo National Wildlife Refuge, Ecological Service Office, Carr. 301, Km. 5.1, Bo. Corozo, Boquerón, Puerto Rico, for the other seven species.

**FOR FURTHER INFORMATION CONTACT:**

Ralph Costa, Field Supervisor, Clemson, South Carolina, at address above (telephone, (864) 656–2432) or Carlos Díaz, Boquerón, Puerto Rico, at address above (telephone, (787) 851–7297, ext. 230).

**SUPPLEMENTARY INFORMATION:** Under the Act (16 U.S.C. 1533 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every five

years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the following species that are currently federally listed as threatened: guajón and higo chumbo; and the following species currently federally listed as endangered: Puerto Rican parrot, Puerto Rican plain pigeon, red-cockaded woodpecker, Puerto Rican boa, Virgin Islands tree boa, and *Adiantum vivesii*.

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants) and is also available on our Internet site at <http://endangered.fws.gov/wildlife.html#Species>. Amendments to the List through final rules are published in the **Federal Register**.

#### What Information Is Considered in the Review?

A 5-year review considers the best scientific and commercial data that has become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading “How do we determine whether a species is endangered or threatened?”); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

### Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

### How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

### What Could Happen as a Result of This Review?

If we find that there is new information concerning any of these eight species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then these species will remain on the List under their current status.

### Public Solicitation of New Information

We request any new information concerning the status of these eight species. See "What information is considered in the review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by

knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments, however. 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.

### Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 17, 2005.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. 05-17978 Filed 9-9-05; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Availability of a Technical Agency Draft Recovery Plan for the Endangered Spring Creek Bladderpod (*Lesquerella perforata*) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and opening of public comment period.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability of the technical agency draft recovery plan for the Spring Creek bladderpod (*Lesquerella perforata*). This species is endemic to the Central Basin in Tennessee. It is currently known from only three watersheds (Spring Creek, Bartons Creek, and Cedar Creek) in Wilson County, Tennessee. The technical agency draft recovery plan includes specific recovery objectives and criteria to be met in order to downlist this species to threatened status and delist it under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1533 *et seq.*). We solicit review and comment on this technical agency draft recovery plan

from local, State, and Federal agencies, and the public.

**DATES:** In order to be considered, we must receive comments on the draft recovery plan on or before November 14, 2005.

**ADDRESSES:** If you wish to review this technical agency draft recovery plan, you may obtain a copy by contacting the Tennessee Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (telephone (931) 528-6481), or by visiting our recovery plan Web site at <http://endangered.fws.gov/recovery/index.html#plans>. If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and materials to the Project Leader, at the above address.

2. You may hand-deliver written comments to our Tennessee Field Office, at the above address, or fax your comments to (931) 528-7075.

3. You may send comments by e-mail to [timothy\\_merritt@fws.gov](mailto:timothy_merritt@fws.gov). For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

Comments and materials received are available for public inspection on request, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Timothy Merritt at the above address (telephone (931) 528-6481, ext. 211).

### SUPPLEMENTARY INFORMATION:

#### Background

We listed the Spring Creek bladderpod under the Act, on January 22, 1997 (61 FR 67493). This rare plant, a winter annual, is restricted to the floodplains of three creeks (Bartons, Spring and Cedar) in Wilson County, Tennessee. It can be found in agricultural fields, flooded pastures and glades, and disturbed areas. It requires some degree of disturbance, such as scouring from natural flooding or plowing of the soil, to complete its life cycle.

Factors contributing to its endangered status are an extremely limited range and loss of habitat. The primary threat is the loss of habitat due to conversion of land to uses other than cultivation of annual crops, such as the rapid commercial, residential, and industrial development that is occurring throughout Wilson County.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species

program. To help guide the recovery effort, we are preparing recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species; establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The objective of this technical agency draft plan is to provide a framework for the recovery of this species so that protection under the Act is no longer necessary. Spring Creek bladderpod will be considered for reclassification to threatened status when there are 15 occurrences: Five occurrences located within the floodplain of each of the three creeks (Spring Creek, Bartons Creek, and Cedar Creek). These occurrences either located on public or private land must be protected by a permanent conservation easement with a management agreement. Each occurrence must consist of an average of 500 plants over a five-year period with no less than 100 plants in any given year.

Spring Creek bladderpod will be considered for delisting when there are 25 occurrences, with at minimum five occurrences located within the floodplain of each of the three creeks (Spring Creek, Bartons Creek, and Cedar Creek). Each occurrence either located on public or private land must be protected by a permanent conservation easement with a management agreement. Each occurrence must consist of an average of 500 plants over a ten-year period with no less than 100 plants in any given year. As reclassification and recovery criteria are met, the status of the species will be reviewed and it will be considered for reclassification or removal from the Federal List of Endangered and Threatened Wildlife and Plants.

#### Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the

date specified above prior to final approval of the draft recovery plan.

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Tennessee Field Office (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 17, 2005.

**Cynthia K. Dohner,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 05-17977 Filed 9-9-05; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Proposed Agency Information Collection: Indian Reservation Roads Program; Comment Request

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed renewal of information collection.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is seeking comments on information collected for the Indian Reservation Roads (IRR) Program pursuant to the Paperwork Reduction Act of 1995. When the rule was approved and published 3 years ago, the information collection was also approved for 3 years. We now must renew that approval so that we can

continue to operate the IRR Program. This renewal is necessary for tribal participation in the IRR Program and for the allocation of funding for the IRR Program to federally-recognized tribal governments for transportation assistance.

**DATES:** Written comments must be received on or before November 14, 2005.

**ADDRESSES:** Comments should be sent to LeRoy Gishi, Chief, Division of Transportation, 1951 Constitution Avenue, NW., Mail Stop Room 20-SIB, Washington, DC 20240; or faxed to (202) 208-4696.

**FOR FURTHER INFORMATION CONTACT:** You may request further information or obtain copies of the proposed information collection request from LeRoy Gishi, (202) 513-7711.

**SUPPLEMENTARY INFORMATION:** This information collection is necessary to allow federally-recognized tribal governments to participate in the Indian Reservation Roads (IRR) Program as defined in 23 U.S.C. 204(a)(1). Some of the information collected determines the allocation of IRR program funds to Indian tribes as described in 23 U.S.C. 202(d)(2)(A).

#### Request for Comments

The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection 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 the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 20-SIB, during the hours of 8 a.m. to 4:30 p.m., e.s.t., Monday through Friday, except for legal holidays. If you wish to have your name and/or address withheld, you must state this

prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

#### Information Collection Abstract

*OMB Control Number:* 1076-0161.

*Type of Review:* Renewal.

*Title:* 25 CFR 170, Indian Reservation Roads.

*Brief Description of Collection:* Some of the information such as the application of Indian Reservation Roads High Priority Projects (IRRHPP) (25 CFR 170.210), the road inventory updates (25 CFR 170.443), the development of a long-range transportation plan (25 CFR 170.411 and 170.412), the development of a tribal transportation improvement program and priority list (25 CFR 170.420 and 170.421) are mandatory for consideration of projects and for program funding from the formula. Some of the information such as public hearing requirements is necessary for public notification and involvement (25 CFR 170.437 and 170.439). While others such as data appeals (25 CFR 170.231) and requests for design exceptions (25 CFR 170.456) are voluntary information.

*Respondents:* Respondents include federally-recognized Indian tribal governments who have transportation needs associated with the IRR Program as described in 25 CFR 170.

*Number of Respondents:* 562.

*Number of Responses:* Varies from 10 to 562.

*Estimated Time per Response:* The reports require from 30 minutes to 40 hours to complete. An average would be 16 hours.

*Frequency of Response:* Annually or on an as needed basis.

*Total Annual Burden to Respondents:* 18,828 hours.

*Total Annual Cost to Respondents:* \$188,280.

Dated: September 1, 2005.

**Michael D. Olsen,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 05-17969 Filed 9-9-05; 8:45 am]

BILLING CODE 4310-LY-P

## DEPARTMENT OF THE INTERIOR

### Notice of Intent To Establish and Call for Nominations for the North Slope Science Initiative Science Technical Group

**AGENCY:** Bureau of Land Management (BLM), Interior.

**SUMMARY:** This notice announces the establishment of the North Slope Science Initiative Science Technical Group by the Secretary of the Interior (Secretary) and calls for nominations to serve on the Science Technical Group in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972, 5 U.S.C. Appendix. A copy of the Science Technical Group charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with Section 9(c) of FACA.

**DATES:** Submit a completed nomination form and nomination letters to the address listed below no later than October 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ken Taylor, Executive Director, North Slope Science Initiative (910), Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, Alaska 99513, telephone (907) 271-3131.

**SUPPLEMENTARY INFORMATION:** The purpose of the Science Technical Group is to assist in identifying and prioritizing inventory, monitoring and research needs, and providing other scientific advice as requested by the Oversight Group of the North Slope Science Initiative. The Oversight Group consists of the Alaska Regional Directors of the Fish and Wildlife Service, Minerals Management Service, National Park Service, Geological Survey, National Marine Fisheries Service, State Director of the Bureau of Land Management, Alaska Commissioners of the Department of Natural Resources and the Department of Fish and Game, the Mayor of the North Slope Borough, and the President of the Arctic Slope Regional Corporation.

The duties of the Science Group are solely advisory to the Oversight Group. Duties will include the following:

a. Advise the Oversight Group on science planning and relevant research and monitoring projects;

b. Advise the Oversight Group on scientific information relevant to the Oversight Group's mission;

c. Review selected reports to advise the Oversight Group on their content and relevance;

d. Review ongoing scientific programs of North Slope Science Initiative (NSSI)-member organizations on the North Slope at the request of the member organizations to promote compatibility in methodologies and compilation of data;

e. Advise the Oversight Group on how to ensure that scientific products generated through NSSI activities are of the highest technical quality;

f. Periodically review the North Slope Science Plan and provide recommendations for changes to the Oversight Group;

g. Provide recommendations for proposed NSSI funded inventory, monitoring and research activities to the Oversight Group;

h. Provide other scientific advice as requested by the Oversight Group; and

i. Coordinate with groups and subgroups appointed or requested by the Oversight Group to provide science advice, as needed.

The Science Technical Group will consist of up to 15 members. The Executive Director for the North Slope Science Initiative shall serve as the Designated Federal Officer for the Science Technical Group. Specifically, the membership will consist of professionals typically with advanced degrees and a minimum of 5 years of work experience in their field in Alaska, preferably in the North Slope region. Professionals will be selected from among but not limited to the following disciplines: expertise in North Slope traditional and local knowledge, landscape ecology, petroleum engineering, civil engineering, petroleum geology, botany, hydrology, limnology, habitat biology, wildlife biology, marine ecology, biometrics, sociology, cultural anthropology, economics, ornithology, oceanography, civil engineering, fisheries biology, and climatology. Any individual or organization may nominate one or more persons to serve on the Science Technical Group. Members will be appointed for 3-year terms, on a staggered term basis, with one-third of the Science Group members subject to appointment, or reappointment, each year. In order to establish these staggered terms all appointments begin on the effective date of this charter then one-third of the members' terms will terminate in 1-year and one-third of the members' terms will terminate in 2 years. The terms of the remaining one-third of the membership will terminate in 3 years. Members will be appointed, or reappointed, each year thereafter for 3-year terms.

Individuals may nominate themselves to the Science Technical Group. You may obtain nomination forms from the Executive Director, North Slope Science Initiative (see address above). To make a nomination, you must submit a completed nomination form with a letter of reference which speaks to the nominee's qualifications to serve on the Science Technical Group. The professional discipline the nominee would like to represent should be identified in the letter of nomination

and in the nomination form. Nominees may be professionals from agencies, academia, businesses, Alaska Native organizations, or the public-at-large. Nominees selected to serve on the Science Technical Group will serve only in their professional capacity and will not serve to represent any group, agency or entity with whom they may be affiliated.

The Executive Director shall collect the nomination forms and letters of reference and distribute them to the Oversight Group for the NSSI. The Oversight Group will submit their recommendations through the Bureau of Land Management to the Secretary of the Interior who has responsibility for making the appointments.

Members on the Science Technical Group will serve without monetary compensation. Members will be reimbursed for travel and per diem expenses at current rates for Federal Government employees.

#### Certification

I hereby certify that the establishment of the Science Technical Group for the North Slope Science Initiative is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources and facilities of the Department of the Interior.

Date Signed: September 1, 2005.

**Gale A. Norton,**

*Secretary of the Interior.*

[FR Doc. 05-18031 Filed 9-9-05; 8:45 am]

BILLING CODE 4310-JA-P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO600-05-1040-MO]

#### Notice of Public Meeting, Southwest Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior (DOI), Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The Southwest Colorado RAC meeting will begin at 9 a.m. and adjourn at 4 p.m. on October 28, 2005.

**ADDRESSES:** The Southwest Colorado RAC meeting will be held at the Uncompahgre Field Office, 2505 S. Townsend Ave., Montrose, Colorado.

#### FOR FURTHER INFORMATION CONTACT:

Barbara Sharrow, Field Manager, BLM Uncompahgre Field Office, 2505 S. Townsend Ave., Montrose, CO, telephone (970) 240-5300; or Melodie Lloyd, Public Affairs Specialist, BLM Western Slope Center, 2815 H Rd., Grand Junction, CO, telephone (970) 244-3097.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public lands managed by the BLM in southwestern Colorado. All meetings are open to the public.

The purpose of the meeting:  
Field manager updates.  
Briefing on BLM sage grouse policies and strategies.

Briefing on improved processes for lease sale notification.

Briefing on land acquisition projects in southwestern Colorado.

Schedule 2006 meetings.

There will be an opportunity for the public to address the RAC at 2:30 p.m. Written comments may be submitted for the RAC's consideration. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: September 1, 2005.

**Barbara Sharrow,**

*Lead Designated Federal Officer and Uncompahgre Field Manager.*

[FR Doc. 05-17900 Filed 9-9-05; 8:45 am]

BILLING CODE 4310-JB-P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES-960-1910-BJ-4789] ES-053726, Group No. 27, Illinois

#### Eastern States: Filing of Plat of Survey

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of Filing of Plat of Survey; Illinois.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

**SUPPLEMENTARY INFORMATION:** This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

#### Fourth Principal Meridian, Illinois

T. 13 S., R. 1 W.

The plat of survey represents the survey of a portion of the Lock and Dam No. 26 acquisition boundary on an island in the Mississippi River in Township 13 South, Range 1 West, of the Fourth Principal Meridian, in the State of Illinois, and was accepted September 2, 2005. We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: September 2, 2005.

**Stephen D. Douglas,**

*Chief Cadastral Surveyor.*

[FR Doc. 05-17974 Filed 9-9-05; 8:45 am]

BILLING CODE 4310-GJ-P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES-960-1420-BJ-TRST] ES-053722, Group No. 170, Minnesota

#### Eastern States: Filing of Plat of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plat survey; Minnesota.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

**SUPPLEMENTARY INFORMATION:** This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

#### Fifth Principal Meridian, Minnesota

T. 143 N., R. 37 W.

The plat of survey represents the dependent resurvey of portions of the south, east, west and north boundaries, a portion of the subdivisional lines; and the dependent resurvey and survey of the subdivision of sections 1, 3, 4, 5, 10, 15, 16, 23, 24, 25, 27, 30, 32, 34 and 36, Township 143 North, Range 37 West, of the Fifth Principal Meridian, in the State of Minnesota., and was accepted September 1, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 1, 2005.

**Stephen D. Douglas,**

*Chief Cadastral Surveyor.*

[FR Doc. 05-17975 Filed 9-9-05; 8:45 am]

BILLING CODE 4310-GJ-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES-960-1910-BJ-4789] ES-053725, Group No. 35, Missouri

#### Eastern States: Filing of Plat of Survey

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of Filing of Plat of Survey; Missouri.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

**SUPPLEMENTARY INFORMATION:** This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

**Fifth Principal Meridian, Missouri**

T. 48 N., Rs. 4 and 5 E.

The plat of survey represents the survey of a portion of the Lock and Dam No. 26 acquisition boundary on an island in the Mississippi River in Township 48 North, Range 4 and 5 East, of the Fifth Principal Meridian, in the State of Missouri, and was accepted September 2, 2005. We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: September 2, 2005.

**Stephen D. Douglas,**

*Chief Cadastral Surveyor.*

[FR Doc. 05-17973 Filed 9-9-05; 8:45 am]

BILLING CODE 4310-GJ-P

## NATIONAL CREDIT UNION ADMINISTRATION

### Notice of Meeting

**TIME AND DATE:** 10 a.m., Thursday, September 15, 2005.

**PLACE:** Board Room, 7th Floor, Room 7074, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Open.

#### **MATTERS TO BE CONSIDERED:**

1. Request from a Federal Credit Union to Convert to a Community Charter.

2. Proposed Rule: Section 741.6(a) of NCUA's Rules and Regulations, Financial and Statistical and Other Reports.

3. Final Rule: Part 712 of NCUA's Rules and Regulations, Credit Union Service Organizations.

**TIME AND DATE:** 9 a.m., Thursday, September 15, 2005.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Closed.

#### **MATTERS TO BE CONSIDERED:**

1. One (1) Insurance Appeal. Closed pursuant to Exemption (6).

2. Internal Board Procedures and Technical Corrections. Closed pursuant to Exemption (2).

**RECESS:** 9:30 a.m.

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: (703) 518-6304.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 05-18173 Filed 9-8-05; 3:39 pm]

BILLING CODE 7535-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-8]

### Calvert Cliffs Independent Spent Fuel Storage Installation Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a License Amendment

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Issuance of an Environmental Assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Sebrosky, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-1132; Fax number: (301) 415-8555; E-mail: [jms3@nrc.gov](mailto:jms3@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Special

Nuclear Materials License No. 2505 that would incorporate changes to the updated safety analysis report to alter the design basis limit for the dry shielded canister (DSC) internal pressure from 50 psig to 100 psig. Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP) is currently storing spent nuclear fuel at the Calvert Cliffs independent spent fuel storage installation (ISFSI) located in Calvert County, Maryland.

#### **Environmental Assessment (EA)**

*Identification of Proposed Action:* By letter dated May 16, 2005, CCNPP submitted a request to the NRC to amend license SNM-2505 in order to incorporate changes to the updated safety analysis report to alter the design basis limit for the DSC internal pressure from 50 psig to 100 psig. The design basis limit change is being made to support CCNPP adding the NUHOMS-32P as an optional design to the existing NUHOMS-24P design for dry storage of spent fuel. The NUHOMS-32P design stores eight more spent fuel assemblies than the NUHOMS-24P design.

The proposed action before the NRC is whether to approve the amendment.

*Need for the Proposed Action:* The proposed action would allow CCNPP to optimize its dry spent fuel storage capacity by upgrading portions of its ISFSI to use the NUHOMS-32P DSC. The proposed action would allow CCNPP to reduce the minimum number of canister loadings each year from four (using the NUHOMS-24P design) to three (with the NUHOMS-32P design).

*Environmental Impacts of the Proposed Action:* By letter dated December 12, 2003, CCNPP submitted a request to amend license SNM-2505 to add the NUHOMS-32P as an optional design to the existing NUHOMS-24P design for dry storage of spent fuel. An EA and Finding of No Significant Impact (FONSI) were published in the **Federal Register** on May 24, 2005 (70 FR 29784) for CCNPP's December 12, 2003, license amendment request which concluded that adding the NUHOMS-32P as an optional design to the existing NUHOMS-24P design for dry storage of spent nuclear fuel would have no significant impact on the environment.

The proposed action contained in CCNPP's May 16, 2005, request is to incorporate changes to the updated safety analysis report to alter the design basis limit for the DSC internal pressure from 50 psig to 100 psig. The DSC provides confinement, an inert environment, structural support, and criticality control for 32 pressurized water reactor fuel assemblies. The DSC shell is a welded stainless steel pressure

vessel that includes thick shield plugs at either end. To support the pressure increase structural design changes were made to the DSC to ensure that the confinement boundary for the spent nuclear fuel is maintained under the proposed design pressure limit of 100 psig for all specified normal operation, off-normal operation, and accident conditions. The staff has determined that the proposed action would not endanger life or property. No effluents are released from the ISFSI during operation and the proposed changes have no impact to DSC loading activities. Therefore, there is no significant change in the type or significant increase in the amounts of any effluents that may be released offsite. There is also no significant increase with regard to individual or cumulative occupational radiation exposures because of the proposed action. There are no significant radiological environmental impacts associated with the proposed action because the NUHOMS-32P DSC includes design changes to ensure the confinement boundary for the spent nuclear fuel is maintained under the proposed design pressure limit of 100 psig.

The amendment only affects the requirements associated with the loading of the casks and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

**Alternative to the Proposed Action:** As an alternative to the proposed action, the staff considered denial of the amendment request (*i.e.*, the “no-action” alternative). Approval or denial of the amendment request would result in minimal change in the environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

**Agencies and Persons Consulted:** On August 11, 2005, Richard McLean of the State of Maryland was contacted regarding the proposed action and had no concerns. The NRC staff has determined that consultation under Section 7 of the Endangered Species Act is not required for this specific amendment and will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is

required under Section 106 of the National Historic Preservation Act.

**Conclusions:** The staff has reviewed the amendment request submitted by CCNPP and changing the DSC design basis pressure limit would have no significant impact on the environment.

#### **Finding of No Significant Impact**

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the NRC finds that the proposed action of approving the amendment to the license will not significantly impact the quality of the human environment. Accordingly, the NRC has determined that an environmental impact statement for the proposed license amendment is not warranted.

The request for amendment was docketed under 10 CFR part 72, Docket 72-8. For further details with respect to this action, see the proposed license amendment dated May 16, 2005. The NRC maintains an Agencywide Documents Access Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at: <http://www.nrc.gov/reading-rm/adams.html>. Copies of the referenced documents will also be available for review at the NRC Public Document Room (PDR), located at 11555 Rockville Pike, Rockville, MD, 20852. PDR reference staff can be contacted at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 31st of August, 2005.

For the Nuclear Regulatory Commission,  
**Joseph M. Sebrosky,**  
*Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 05-17971 Filed 9-9-05; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 72-39]**

### **Connecticut Yankee Atomic Power Company Haddam Neck Plant Independent Spent Fuel Storage Installation Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to

Connecticut Yankee Atomic Power Company (CYAPCO or licensee), pursuant to 10 CFR 72.7, from the specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(I), 72.212(b)(7), and 72.214. The licensee is using the NAC Multi-Purpose Canister System (NAC-MPC), Certificate of Compliance (CoC) No. 1025, to store spent fuel under a general license in an independent spent fuel storage installation (ISFSI) associated with the operation of the Haddam Neck Plant, located in Middlesex County, Connecticut. The requested exemption would allow CYAPCO to deviate from requirements of the NAC-MPC CoC No. 1025, Amendment No. 4, Appendix A, Technical Specifications for the NAC-MPC System, Section A 5.1, Training Program. Specifically, the exemption would relieve the licensee from the requirement to develop training modules under its Systems Approach to Training (SAT) that includes comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC-MPC System.

#### **Environmental Assessment**

##### *Identification of the Proposed Action*

The proposed action would exempt CYAPCO from regulatory requirements to develop certain training. By letter dated June 1, 2005, the licensee requested exemptions from certain regulatory requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(I), 72.212(b)(7), and 72.214 which require a general license to store spent fuel in a NRC-certified spent fuel storage cask under the terms and conditions set forth in the CoC. The proposed exemption would allow the licensee to deviate from the requirements in CoC No. 1025, Amendment No. 4, Appendix A, Technical Specifications for the NAC-MPC System, Section A 5.1, Training Program.

CoC No. 1025, Amendment 4, Appendix A, Technical Specifications for the NAC-MPC System, Section A 5.1, Training Program, requires that a training program for the NAC-MPC System be developed under the general licensee's SAT Program. Further, the training modules must include comprehensive instructions for the operation and maintenance of both the NAC-MPC System and the ISFSI. By exempting the licensee from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(I), 72.212(b)(7), and 72.214 for this request, the licensee will not be required to develop training modules that include comprehensive instructions for the operation and maintenance of the ISFSI.

### *The Need for the Proposed Action*

Granting the requested exemptions will relieve the licensee of the requirement to develop training modules under the SAT that include comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC-MPC System. Thus, the licensee will not incur the costs associated with this activity.

### *Environmental Impacts of the Proposed Action*

The NRC has reviewed the exemption requests submitted by the licensee. The staff determined that not requiring the licensee to develop training modules including comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC-MPC System, is an administrative change, and would have no significant impacts to the environment.

Further, NRC has evaluated the impact to public safety that would result from granting the requested exemptions. CYAPCO has stated that for activities associated with operation and maintenance of ISFSI structures, systems, and components (SSCs) that are not important to safety, CYAPCO will provide training/instructions in accordance with manufacturer's instructions and CYAPCO approved procedures. NRC determined that requiring the licensee to develop training modules under its SAT for the operation and maintenance of ISFSI SSCs considered not-important-to-safety would not provide a commensurate increase in public safety associated with the costs. Therefore, allowing the licensee to develop these modules separately from its SAT does not impact public safety.

The proposed action would not increase the probability or consequences of accidents, no changes would be made to the types of effluents released offsite, and there would be no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

The potential environmental impact of using the NAC-MPC System was initially presented in the Environmental Assessment for the Final Rule to add the NAC-MPC System to the list of approved spent fuel storage casks in 10 CFR 72.214 (65 FR 12444, dated March 9, 2000), as revised in Amendment No. 1 (66 FR 45749, dated August 30, 2001), in Amendment No. 2 (67 FR 11566, dated March 15, 2002), in Amendment No. 3 (68 FR 42570, dated July 18,

2003), and in Amendment No. 4 (69 FR 50053, dated August 13, 2004).

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

### *Alternatives to the Proposed Action*

Since there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impacts were not evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption request would have the same environmental impact as the proposed action.

### *Agencies and Persons Consulted*

On July 6, 2005, the staff consulted with Mr. Michael Firsick of the Connecticut Department of Environmental Protection, Division of Radiation, regarding the environmental impact of the proposed action. He had no comments. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

### **Finding of No Significant Impact**

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the NRC finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(I), 72.212(b)(7), and 72.214 and not requiring the licensee to develop training modules under its SAT that includes comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC-MPC will not significantly impact the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this exemption request, see CYAPCO's letter dated June 1, 2005. The exemption request was docketed under 10 CFR 72, Docket No. 72-39. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams/web-based.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail at [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 31st day of August, 2005.

For the Nuclear Regulatory Commission.

**L. Raynard Wharton,**

*Project Manager, Spent Fuel Project Office,  
Office of Nuclear Material Safety and  
Safeguards.*

[FR Doc. 05-17970 Filed 9-9-05; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

[Docket No. 030-19526]

### **Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Elan Operations, Inc., Princeton, NJ Facility**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability.

**FOR FURTHER INFORMATION CONTACT:** John Nicholson, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337-5236, fax (610) 337-5269; or by e-mail: [jjn@nrc.gov](mailto:jjn@nrc.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Introduction**

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to Elan Operations, Inc. (formerly Elan Pharmaceuticals and The Liposome Company), Materials License No. 29-19918-01, to authorize release of its facility in Princeton, New Jersey for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No

Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

## II. EA Summary

The purpose of the action is to authorize the release of the licensee's Princeton, New Jersey facility for unrestricted use. Elan Operations, Inc. (known as The Liposome Company at the time) was authorized by NRC from April 23, 1982, to use radioactive materials for research and development purposes at the site. On February 26, 2005, Elan Operations, Inc. requested that NRC release the facility for unrestricted use. Elan Operations, Inc. has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Elan Operations, Inc. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

## III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Elan Operations, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG-1496, Volumes 1-3, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not

to prepare an environmental impact statement for the action.

## IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The Environmental Assessment (ML052450172); Letter dated November 5, 2003 requesting the amendment and including the plan for decommissioning (ML033090192); Letter dated June 16, 2004 providing additional information (ML041820304); Letter dated February 26, 2005 (ML050980018); Final Status Survey Volumes 1 and 2 (ML050980055 and ML050980057); and Letter dated April 19, 2005 providing additional information (ML051300383). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397-4209 or (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to the NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at <http://www.nrc.gov/reading-rm/foia-privacy.html>.

Dated at King of Prussia, Pennsylvania this 2nd day of September, 2005.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety Region I.*

[FR Doc. 05-17972 Filed 9-9-05; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**DATES:** Week of September 5, 2005.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

### MATTERS TO BE CONSIDERED:

**Week of September 5, 2005**

*Friday, September 9, 2005*

- 9 a.m. Affirmation Session (Public Meeting) (Tentative)
- Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72-22-ISFSI; Review of Utah Contention K (Aircraft Crash Hazards) Rulings (Tentative).

\* \* \* \* \*

The Affirmation Session tentatively scheduled on Thursday, September 9, 2005, at 9:25 a.m. has been rescheduled tentatively on Friday, September 9, 2005, at 9 a.m.

\* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415-7080, TDD: (301) 415-2100, or by e-mail at [aks@nrc.gov](mailto:aks@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: September 7, 2005.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 05-18070 Filed 9-8-05; 8:45 am]

**BILLING CODE 7590-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52381; File No. SR-CFE-2005-02]

### Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Customer Margin Requirements for Security Futures

September 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 26, 2005, the CBOE Futures Exchange, LLC ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CFE is proposing margin requirements for security futures traded on CFE and other related new rules. Specifically, the proposed rule change sets the minimum initial and maintenance customer margin rates for such security futures and provides for lower margin levels for permitted strategy-based offset positions. The proposed rules exclude certain financial relations to which the SEC's margin rules do not apply. The proposed rule change also establishes standards under which CFE Trading Privilege Holders ("TPHs") may qualify as security futures dealers and therefore be excluded from CFE's margin rules. Lastly, the proposed rule change sets forth a security futures market maker program. The text of the proposed rule change is provided below. New text is italicized.

\* \* \* \* \*

#### CBOE Futures Exchange, LLC

##### 517. Customer Margin Requirements for Contracts that are Security Futures

(a) *Scope of Rule.* This Rule 517 shall apply to positions resulting from transactions in Security Futures, traded on the Exchange or subject to the Rules of the Exchange to the extent that such positions are held by Clearing Members or, if applicable, Trading Privilege

Holder on behalf of Customers in futures accounts (as such term is defined in Commission Regulation § 1.3(vv) and Exchange Act Regulation 15c3-3(a)), with paragraph (n) of this Rule 517 also applying to such positions held in securities accounts (as such term is defined in Commission Regulation 1.3(wv) and Exchange Act Regulation 15c3-3(a)). As used in this Rule 517, the term "Customer" does not include (i) any exempted person (as such term is defined in Commission Regulation § 41.43(a)(9) and Exchange Act Regulation 401(a)(9)) and (ii) any Market Maker (as such term is defined in paragraph (n) below). Nothing in this Rule 517 shall alter the obligation of each Clearing Member and, if applicable, Trading Privilege Holder to comply with Applicable Law relating to customer margin for transactions in Security Futures, including without limitation Commission Regulations 41.42 through 41.49 or Rules 400 through 406 under the Exchange Act, as applicable (including in each case any successor regulations or rules).

(b) *Margin System.* The Standard Portfolio Analysis of Risk (SPAN®\* is the margin system adopted by the Exchange. SPAN® generated margin requirements shall constitute Exchange margin requirements. All references to margin in the Rules of the Exchange shall be to margin computed on the basis of SPAN®. Margin systems other than SPAN® may be used to meet Exchange margin requirements if the relevant Clearing Member or, if applicable, Trading Privilege Holder can demonstrate that its margin system will result in margin requirements that are in all cases equal to or greater than the corresponding requirements determined on the basis of SPAN®.

(c) *Margin Rate.* The Exchange will set and publish the initial and maintenance margin rates to be used in determining Exchange margin requirements; provided that in no case shall the required margin for any long or short position held by a Clearing Member or, if applicable, Trading Privilege Holder on behalf of a Customer be less than the rate from time to time determined by the Commission and the Securities and Exchange Commission for purposes of Commission Regulation 41.45(b)(1) and Rule 403(b)(1) under the Exchange Act unless a lower margin level is available for such position pursuant to paragraph (m) below.

\*"SPAN" is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc. assumes no liability in connection with the use of SPAN by any person or entity.

(d) *Acceptable Margin Deposits.*

(i) *Clearing Members and, if applicable, Trading Privilege Holders may accept from their Customers as margin deposits of cash, margin securities (subject to the limitations set forth in the following sentence), exempted securities, any other assets permitted under Regulation T of the Board of Governors of the Federal Reserve System (as in effect from time to time) to satisfy a margin deficiency in a securities margin account, and any combination of the foregoing, each as valued in accordance with Commission Regulation 41.46(c) and (e) or Rule 404(c) and (e) under the Exchange Act, as applicable. Shares of a money market mutual fund that meet the requirements of Commission Regulations 1.25 and 41.46(b)(2) and Rule 404(b)(2) under the Exchange Act, as applicable, may be accepted as a margin deposit from a Customer for purposes of this Rule 517.*

(ii) *A Clearing Member or, if applicable, Trading Privilege Holder shall not accept as margin from any Customer securities that have been issued by such Customer or an Affiliate of such Customer unless such Clearing Member or Trading Privilege Holder files a petition with and receives permission from the Exchange for such purpose.*

(iii) *All assets deposited by a Customer to meet margin requirements must be and remain unencumbered by third party claims against the depositing Customer.*

(iv) *Except to the extent prescribed otherwise by the Exchange, cash margin deposits shall be valued at market value and all other margin deposits shall be valued at an amount not to exceed that set forth in Commission Regulation 41.46(c) and (e) or Rule 404(c) and (e) under the Exchange Act, as applicable (including in each case any successor regulations or rules).*

(e) *Acceptance of Orders.* Clearing Members and, if applicable, Trading Privilege Holders may accept Orders for a particular Customer account only if sufficient margin is on deposit in such account or is forthcoming within a reasonable period of time (which shall be no more than five Business Days, although the relevant Clearing Member or, if applicable, Trading Privilege Holder may deem one hour to be a reasonable period of time). For a Customer account that has been subject to calls for margin for an unreasonable period of time, Clearing Members and, if applicable, Trading Privilege Holders may only accept Orders that, when executed, will reduce the margin requirements resulting from the existing positions in such account. Clearing

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Members and, if applicable, Trading Privilege Holders may not accept Orders for a Customer account that would liquidate to a deficit or that has a debit balance.

(f) *Margin Calls.* Clearing Members and, if applicable, Trading Privilege Holders must call for margin from a particular Customer:

(i) when the margin equity on deposit in such Customer's account falls below the applicable maintenance margin requirement; or

(ii) subsequently, when the margin equity on deposit in such Customer's account, together with any outstanding margin calls, is less than the applicable maintenance margin requirement.

Any such call must be made within one Business Day after the occurrence of the event giving rise to such call. Clearing Members and, if applicable, Trading Privilege Holders may call for additional margin at their discretion.

Clearing Members and, if applicable, Trading Privilege Holders shall reduce any call for margin only to the extent that margin deposits permitted under paragraph (d) above are received in the relevant account. Clearing Members and, if applicable, Trading Privilege Holders may delete any call for margin only if (i) margin deposits permitted under paragraph (d) above equal to or in excess of the deposits called are received in the relevant account or (ii) inter-day favorable market movements or the liquidation of positions result in the margin on deposit in the relevant account being equal to or greater than the applicable initial margin requirement. In the event of any such reduction or deletion, the oldest outstanding margin call shall be reduced or deleted first.

Clearing Members and, if applicable, Trading Privilege Holders shall maintain written records of any and all margin calls issued, reduced or deleted by them.

(g) *Disbursements of Excess Margin.* Clearing Members and, if applicable, Trading Privilege Holders may release to Customers margin on deposit in any account only to the extent that such margin is in excess of the applicable initial margin requirement under this Rule 517 and any other applicable margin requirement.

(h) *Loans to Customers.* Clearing Members and, if applicable, Trading Privilege Holders may not extend loans to Customers for margin purposes unless such loans are secured within the meaning of Commission Regulation 1.17(c)(3). The proceeds of any such loan must be treated in accordance with Commission Regulation 1.30.

(i) *Aggregation of Accounts and Positions.* For purposes of determining margin requirements under this Rule 517, Clearing Members and, if applicable, Trading Privilege Holders shall aggregate accounts under identical ownership if such accounts fall within the same classifications of customer segregated, customer secured, special reserve account for the exclusive benefit of customers and non-segregated for margin purposes. Clearing Members and, if applicable, Trading Privilege Holders may compute margin requirements for identically owned concurrent long and short positions on a net basis.

(j) *Omnibus Accounts.* Clearing Members and, if applicable, Trading Privilege Holders shall collect margin on a gross basis for positions held in domestic and foreign omnibus accounts. For omnibus accounts, initial margin requirements shall equal the corresponding maintenance margin requirements. Clearing Members and, if applicable, Trading Privilege Holders shall obtain and maintain written instructions from domestic and foreign omnibus accounts for positions that are eligible for offsets pursuant to paragraph (m) below.

(k) *Liquidation of Positions.* If a Customer fails to comply with a margin call required by Commission Regulations 41.42 through 41.49 or Rules 400 through 406 under the Exchange Act, as applicable, within a reasonable period of time (which shall be no more than five Business Days, although the relevant Clearing Member or, if applicable, Trading Privilege Holder may deem one hour to be a reasonable period of time), the relevant Clearing Member or, if applicable, Trading Privilege Holder may liquidate positions in such Customer's account to ensure compliance with the applicable margin requirements.

(l) *Failure To Maintain Required Margin.* If a Clearing Member or, if applicable, Trading Privilege Holder fails to maintain sufficient margin for any Customer account in accordance with this Rule 517, the Exchange may direct such Clearing Member or Trading Privilege Holder to immediately liquidate all or any part of the positions in such account to eliminate the deficiency.

(m) *Offsetting Positions.* For purposes of Commission Regulation § 41.45(b)(2) and Rule 403(b)(2) under the Exchange Act, the initial and maintenance margin requirements for offsetting positions involving Security Futures, on the one hand, and related positions, on the other hand, are set at the levels

specified in Schedule A to this Chapter 5.

(n) *Exclusion for Market Makers.*

(i) A Person shall be a "Market Maker" for purposes of this Rule 517, and shall be excluded from the requirements set forth in Commission Regulations 41.42 through 41.49 and Rules 400 through 406 under the Exchange Act, as applicable, in accordance with Commission Regulation 41.42(c)(2)(v) and Rule 400(c)(2)(v) under the Exchange Act with respect to all trading in Security Futures for its own account, if such Person is a Trading Privilege Holder or Authorized Trader that is registered with the Exchange as a dealer (as such term is defined in Section 3(a)(5) of the Exchange Act) in Security Futures.

(ii) Each Market Maker shall:

(A) be registered as a floor trader or a floor broker with the Commission under Section 4f(a)(1) of the CEA or as a dealer with the Securities and Exchange Commission (or any successor agency or authority) under Section 15(b) of the Exchange Act;

(B) maintain records sufficient to prove compliance with the requirements set forth in this paragraph (n) and Commission Regulation 41.42(c)(2)(v) or Rule 400(c)(2)(v) under the Exchange Act, as applicable, including without limitation trading account statements and other financial records sufficient to detail activity; and

(C) hold itself out as being willing to buy and sell Security Futures for its own account on a regular or continuous basis.

A Market Maker satisfies condition (C) above if:

(1) such Market Maker: (x) provides continuous two-sided quotations throughout the trading day for all delivery months of Security Futures representing a meaningful proportion of the total trading volume on the Exchange from Security Futures in which that Market Maker is designated as a Market Maker, subject to relaxation during unusual market conditions as determined by the Exchange (such as a fast market in either a Security Future or a security underlying such Security Future) at which times such Market Maker must use its best efforts to quote continuously and competitively; and (y) when providing quotations, quotes with a maximum bid/ask spread of no more than the greater of \$0.20 or 150% of the bid/ask spread in the primary market for the security underlying each Security Future; or

(2) such Market Maker: (x) responds to at least 75% of the requests for quotation for all delivery months of Security Futures representing a

meaningful proportion of the total trading volume on the Exchange from Security Futures in which that Market Maker is designated as a Market Maker, subject to relaxation during unusual market conditions as determined by the Exchange (such as a fast market in either a Security Future or a security underlying such Security Future) at which times such Market Maker must use its best efforts to quote competitively; and (y) when responding to requests for quotation, quotes within five seconds with a maximum bid/ask

spread of no more than the greater of \$0.20 or 150% of the bid/ask spread in the primary market for the security underlying each Security Future.

For purposes of clauses (1) and (2) above, beginning on the 181st calendar day after the commencement of trading of Security Futures, a "meaningful proportion of the total trading volume on the Exchange from Security Futures in which that Market Maker is designated as a Market Maker" shall mean a minimum of 20% of such trading volume.

(iii) Any Market Maker that fails to comply with the Rules of the Exchange, Commission Regulations 41.42 through 41.49 or Rules 400 through 406 under the Exchange Act, as applicable, shall be subject to disciplinary action in accordance with Chapter 7. Appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such Market Maker's registration as a dealer in Security Futures pursuant to clause (i) above.

\* \* \* \* \*

Schedule A to CFE Chapter 5

**Margin Levels for Offsetting Positions**

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
1. Long security future (or basket of security futures representing each component of a narrow-based securities index <sup>1</sup> ) and long put option <sup>2</sup> on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price <sup>3</sup> of the put plus the aggregate put out-of-the-money <sup>4</sup> amount, if any; or (2) 20% of the current market value of the long security future.
2. Short security future (or basket of security futures representing each component of a narrow-based securities index) and short put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. <sup>5</sup>
3. Long security future and short position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the short stock or stocks.	5% of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
4. Long security future (or basket of security futures representing each component of a narrow-based securities index) and short call option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.
5. Long a basket of narrow-based security futures that together tracks a broad-based index and short a broad-based security index call option contract on the same index.	Narrow-based security index ..	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.
6. Short a basket of narrow-based security futures that together tracks a broad-based security index and short a broad-based security index put option contract on the same index.	Narrow-based security index ..	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
7. Long a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index put option contract on the same index.	Narrow-based security index ..	20% of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long basket of security futures.

## Margin Levels for Offsetting Positions—Continued

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
8. Short a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index call option contract on the same index.	Narrow-based security index ..	20% of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short basket of security futures.
9. Long security future and short security future on the same underlying security (or index).	Individual stock or narrow-based security index.	The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.	The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.
10. Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price. (Conversion).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10% of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.
11. Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price (Collar).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.	The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the money amount, if any; or (2) 20% of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.
12. Short security future and long position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long stock or stocks.	5% of the current market value, as defined in Regulation T, of the long stock or stocks.
13. Short security future and long position in a security immediately convertible into the same security underlying the security future, without restriction, including the payment of money.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security.	10% of the current market value, as defined in Regulation T, of the long security.
14. Short security future (or basket of security futures representing each component of a narrow-based securities index) and long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short security future.
15. Short security future, Short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.	10% of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
16. Long (short) a basket of security futures, each based on a narrow-based security index that together tracks the broad-based index and short (long) a broad-based index future.	Narrow-based security index ..	5% of the current market value for the long (short) basket of security futures.	5% of the current market value of the long (short) basket of security futures.
17. Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow-based index future.	Individual stock and narrow-based security index.	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).

Margin Levels for Offsetting Positions—Continued

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
18. Long (short) a security future and short (long) an identical security future traded on a different market. <sup>6</sup>	Individual stock and narrow-based security index.	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).

<sup>1</sup> Baskets of securities or security futures contracts must replicate the securities that comprise the index, and in the same proportion.

<sup>2</sup> Generally, for the purposes of these rules, unless otherwise specified, stock index warrants shall be treated as if they were index options.

<sup>3</sup> "Aggregate exercise price," with respect to an option or warrant based on an underlying security, means the exercise price of an option or warrant contract multiplied by the numbers of units of the underlying security covered by the option contract or warrant. "Aggregate exercise price" with respect to an index option, means the exercise price multiplied by the index multiplier. See, e.g., Amex Rules 900 and 900C; CBOE Rule 12.3; and NASD Rule 2522.

<sup>4</sup> "Out-of-the-money" amounts shall be determined as follows:

(1) for stock call options and warrants, any excess of the aggregate exercise price of the option or warrant over its current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System);

(2) for stock put options or warrants, any excess of the current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System) of the option or warrant over its aggregate exercise price;

(3) for stock index call options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier; and

(4) for stock index put options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant. See, e.g., NYSE Rule 431 (Exchange Act Release No. 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR-NYSE-99-03)); Amex Rule 462 (Exchange Act Release No. 43582 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR-Amex-99-27)); CBOE Rule 12.3 (Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR-CBOE-97-67)); or NASD Rule 2520 (Exchange Act Release No. 43581 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR-NASD-00-15)).

<sup>5</sup> "In-the-money" amounts must be determined as follows:

(1) for stock call options and warrants, any excess of the current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System) of the option or warrant over its aggregate exercise price;

(2) for stock put options or warrants, any excess of the aggregate exercise price of the option or warrant over its current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System);

(3) for stock index call options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant; and

(4) for stock index put options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier.

<sup>6</sup> Two security futures will be considered "identical" for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical contract specifications, and would offset each other at the clearing level.

\* \* \* \* \*

CFE Policy and Procedure VII. Security Futures Market Maker Registration Policy and Procedures

A. Security Futures Market Maker Program

Pursuant to Exchange Rule 514, the Exchange has adopted a market maker program under which one or more Trading Privilege Holders or Authorized Traders may be designated as market makers in respect of one or more Security Futures to provide liquidity and orderliness in the market for such Security Futures. To be designated as an Exchange market maker in Security Futures, a Trading Privilege Holder or Authorized Trader must complete and file with the Exchange a Market Maker Registration Form. By signing the registration form the Trading Privilege Holder or Authorized Trader will confirm that it meets and will continue to meet the qualifications to act as market maker in Security Futures in accordance with Exchange Rules. The member will be required to identify all Security Futures for which it seeks to be designated as a market maker and elect which of the two alternative sets of

market maker obligations specified in Exchange Rule 517(n) it intends to undertake.

B. Market Maker Exclusion from Customer Margin Requirements

To qualify for the market maker exclusion in Exchange Rule 517(n) for purposes of the Exchange's customer margin rules relating to Security Futures, a person must:

(1) be a Trading Privilege Holder or Authorized Trader that is registered with the Exchange as a dealer in Security Futures as defined in Section 3(a)(5) of the Exchange Act;

(2) be registered as a floor trader or a floor broker under Section 4f(a)(1) of the CEA or as a dealer with the Securities and Exchange Commission ("SEC") under Section 15(b) of the Exchange Act;

(3) maintain records sufficient to prove compliance with the requirements of Exchange Rule 517(n) and Commission Rule 41.42(c)(2)(v) and SEC Rule 400(c)(2)(v) under the Exchange Act as applicable, including without limitation trading account statements and other financial records sufficient to detail activity; and

(4) hold itself out as being willing to buy and sell Security Futures for its own account on regular or continuous basis.

In addition, the market maker exclusion provides that any market maker that fails to comply with the rules of the Exchange or the margin rules adopted by the SEC and the Commission shall be subject to disciplinary action in accordance with Chapter 7 of the Exchange's rules, and that appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such market maker's registration as a dealer in Security Futures.

C. Market Maker Categories

Exchange Rule 517(n) specifies two alternative ways for a Trading Privilege Holder or Authorized Trader to satisfy the requirement that a market maker hold itself out as being willing to buy and sell Security Futures for its own account on a regular or continuous basis. Each Trading Privilege Holder or Authorized Trader seeking market maker designation must register for one of the following two market maker categories and will undertake to perform all of the obligations set forth in the elected category:

Category 1. The market maker will provide continuous two-sided quotations throughout the trading day for all delivery months of Security Futures representing a meaningful proportion of the total trading volume on the Exchange from Security Futures in which that market maker is designated as a market maker, subject to relaxation during unusual market conditions as determined by the Exchange (such as a fast market in either a Security Future or a security underlying such Security Future) at which times such market maker must use its best efforts to quote continuously and competitively; and when providing quotations, quotes for a minimum of one contract with a maximum bid/ask spread of no more than the greater of \$0.20 or 150 percent of the bid/ask spread in the primary market for the security underlying each Security Future; or

Category 2. The market maker will respond to at least 75 percent of the requests for quotations for all delivery months of Security Futures representing a meaningful proportion of the total trading volume on the Exchange from Security Futures in which that market maker is designated as a market maker, subject to relaxation during unusual market conditions as determined by the Exchange (such as a fast market in either a Security Future or a security underlying such Security Future) at which times such market maker must use its best efforts to quote competitively; and when responding to requests for quotation, quotes within five seconds for a minimum of one contract with a maximum bid/ask spread of no more than the greater of \$0.20 or 150 percent of the bid/ask spread in the primary market for the security underlying each Security Future.

For purposes of Categories (1) and (2) above, beginning on the 181st calendar day after the commencement of trading of Security Futures, a "meaningful proportion of the total trading volume on the Exchange from Security Futures in which that market maker is designated as a market maker" shall mean a minimum of 20 percent of such trading volume.

#### D. Qualification for "60/40" Tax Treatment

To qualify as a "dealer" in security futures contracts within the meaning of Section 1256(g)(9) of the Internal Revenue Code of 1986, as amended (the "Code"), a Trading Privilege Holder or Authorized Trader is required (i) to register as a market maker for purposes of the Exchange's margin rules under

Category 1 or Category 2 above; (ii) to undertake in its registration form to provide quotations for all products specified for the market maker exclusion from the Exchange margin rules; and (iii) to quote a minimum size of

(A) ten (10) contracts for each product not covered by (B) or (C) below;

(B) five (5) contracts for each product specified by the member to the extent such quotations are provided for delivery months other than the next two delivery months then trading; and

(C) one (1) contract for any single stock futures contract where the average market price for the underlying stock was \$100 or higher for the preceding calendar month or for any futures contract on a narrow-based security index, as defined by Section 1a(25) of the CEA.

#### E. Products

As noted above in completing the Market Maker Registration Form, a member must specify all Security Futures for which it intends to act as a market maker. The Exchange will assign to the Trading Privilege Holder or Authorized Trader all of the Security Futures listed on its registration form, unless the Exchange provides written notice to the Trading Privilege Holder or Authorized Trader identifying any Security Futures for which such assignment is withheld. A Trading Privilege Holder or Authorized Trader may change the list of Security Futures for which it undertakes to act as market maker for any calendar quarter by filing a revised Market Maker Registration Form with the Exchange on any business day prior to the last trading day of such quarter, and such change shall be effective retroactive to the first trading day of such quarter. Each market maker shall be responsible for maintaining books and records that confirm that it has fulfilled its quarterly obligations under the market maker category elected on its Market Maker Registration Form in respect of all Security Futures designated for that calendar quarter.

#### 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 parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CFE is proposing to adopt new CFE Rule 517, including Schedule A thereto (the "Proposed Rule") to (i) establish general requirements and procedures relating to customer margining by security futures intermediaries ("General Margin Rules"), (ii) set initial and maintenance margin levels for offsetting positions involving security futures and related positions at levels lower than the levels that would be required if those positions were margined separately ("Margin Offset Rule"), and (iii) exclude proprietary trades of qualifying security futures dealers from the margin requirements set forth in the Proposed Rule and the related regulatory requirements ("Market Maker Exclusion"). The General Margin Rules, which are contained in paragraphs (a) through (l) of the Proposed Rule, are detailed below. The Margin Offset Rule consists of paragraph (m) of the Proposed Rule and a table of offsets contained in proposed Schedule A to Chapter 5 of CFE's Rules, which describes in detail the margin offsets available with respect to particular combinations of security futures and related positions. Lastly, the proposed rule change sets forth a security futures market maker program in proposed CFE Policy and Procedure VII, which is being adopted pursuant to CFE Rule 514.

##### (a) General Margin Rules

The General Margin Rules, which are identical to the rules of OneChicago, LLC ("OneChicago") that relate to customer margining by security futures intermediaries, are designed to complement the customer margin rules set forth in Rules 400 through 406 under the Act ("Exchange Act Rules").<sup>3</sup> The Exchange Act Rules contain detailed requirements with respect to the margin to be collected from customers in connection with security futures and related positions held by security futures intermediaries on behalf of such customers. While the General Margin Rules are based on the standardized margin procedures developed by the U.S. futures exchanges' Joint Audit Committee and similar rules in effect for other contract markets designated under the Commodity Exchange Act, as

<sup>3</sup> 17 CFR 242.400-406.

amended (“CEA”),<sup>4</sup> those precedents have been modified in certain respects to conform to the requirements of the Exchange Act Rules. The following paragraphs contain a brief explanation of each paragraph of the General Margin Rules:

Paragraph (a) of the Proposed Rule defines the scope of application of the Proposed Rule in two important respects. First, it provides that the Proposed Rule only applies to transactions in contracts traded on or subject to the rules of CFE. To the extent that security futures intermediaries engage in security futures transactions on or through other exchanges as well, they will need to comply with the respective margin requirements established by such other exchanges. Second, paragraph (a) clarifies that the requirements set forth in the Proposed Rule generally only apply to security futures intermediaries that carry security futures products in futures accounts (with the exception of paragraph (n), which also applies to positions held in securities accounts). As provided in Rule 402(a) under the Act,<sup>5</sup> security futures intermediaries that carry security futures in securities accounts are subject to the Exchange Act Rules, Regulation T<sup>6</sup> of the Board of Governors of the Federal Reserve System, and the margin requirements of the self-regulatory organizations of which they are a member. In addition, paragraph (a) tracks the exemption for “exempted persons” pursuant to Rule 401(a)(9) under the Act.<sup>7</sup>

Paragraph (b) of the Proposed Rule adopts the Standard Portfolio Analysis of Risk (SPAN<sup>®</sup>) as the margining system for CFE. SPAN<sup>®</sup> was developed by the Chicago Mercantile Exchange Inc. and has also been adopted by OneChicago. SPAN<sup>®</sup> evaluates the risk of the futures and options portfolio in each account and assesses a margin requirement based on such risk by establishing reasonable movements in futures prices over a one day period. Security futures intermediaries entering into transactions on CFE can receive risk arrays based on SPAN<sup>®</sup> to calculate margins for each of their accounts, so that they can calculate minimum margin requirements for such accounts on a daily basis. However, until such time as portfolio margining is approved and implemented for security futures without a required minimum margin level, SPAN<sup>®</sup> must be programmed to generate a margin level for each long or

short position in a security future at a level not less than the required margin level for such security future.

Paragraph (c) of the Proposed Rule sets the required minimum margin level for each long or short position in a security future at 20 percent of the current market value of such security future, as required by Rule 403(b) under the Act.<sup>8</sup> The only exception from this general requirement contemplated by the Proposed Rule is the Margin Offset Rule, which is described in greater detail under section (b) below.

Paragraph (d) of the Proposed Rule specifies the types of margin that a security futures intermediary may accept from a customer. Consistent with Rule 404(b) under the Act,<sup>9</sup> acceptable types of margin are limited to deposits of cash, margin securities (subject to specified restrictions), exempted securities, any other assets permitted under Regulation T<sup>10</sup> of the Board of Governors of the Federal Reserve System to satisfy a margin deficiency in a securities margin account, and any combination of the foregoing. Paragraph (d) of the Proposed Rule further provides that the different types of eligible margin are to be valued in accordance with the applicable principles set forth in Rule 404 under the Act.<sup>11</sup>

Paragraph (e) of the Proposed Rule provides that security futures intermediaries may accept orders for a particular account only if (i) sufficient margin is on deposit in such account or is forthcoming within a reasonable time, or (ii) in the event that the conditions set forth in (i) are not satisfied, such orders reduce the margin requirements resulting from the existing positions in such account. This provision is designed to prevent account holders from exacerbating any already existing margin deficiency by entering into further transactions.

Paragraph (f) of the Proposed Rule establishes the general principle that a security futures intermediary must call for initial or maintenance margin equity whenever the minimum margin requirements determined in accordance with paragraph (c) of the Proposed Rule (taking into account any relief available under the Margin Offset Rule) is not satisfied. Any such margin call must be made within one business day after the occurrence of the event giving rise to the call. Paragraph (f) also clarifies that security futures intermediaries may call for margin in excess of CFE’s minimum

requirements. Finally, paragraph (f) provides that a margin call may only be reduced or deleted if and to the extent that (i) qualifying margin deposits are received or (ii) inter-day favorable market movements or the liquidation of positions have offset the previously existing margin deficiency. In each case, the oldest margin call outstanding at any time is to be reduced or deleted first. These provisions address necessary technical aspects of customer margining and are consistent with similar provisions contained in the precedents referred to above.

Paragraph (g) of the Proposed Rule limits the ability of customers to obtain disbursements of excess margin to any amounts in excess of the applicable initial margin requirement under the Proposed Rule and any other applicable margin requirement. This limitation is consistent with Rule 405(a) under the Act.<sup>12</sup>

Paragraph (h) of the Proposed Rule prohibits security futures intermediaries from extending loans to customers for margin purposes unless such loans are secured within the meaning of Commodity Futures Trading Commission (“CFTC”) Regulation 1.17(c)(3).<sup>13</sup> This prohibition corresponds to similar restrictions currently in effect on other contract markets.

Paragraph (i) of the Proposed Rule provides that accounts under identical ownership are to be aggregated for purposes of determining the applicable margining requirements on a net basis if such accounts fall within the same general classification (customer segregated, customer secured, special reserve account for the exclusive benefit of customers and nonsegregated). This aggregation approach is consistent with universal practice in the futures industry and reflects the fact that several accounts under identical ownership may become subject to liquidation of positions in the event of a failure to satisfy margin calls with respect to any one of such accounts.

Paragraph (j) of the Proposed Rule establishes particular rules for omnibus accounts of security futures intermediaries, namely that (i) margin for positions held in such accounts is to be collected on a gross basis, (ii) initial and maintenance margin requirements are identical, and (iii) security futures intermediaries are to obtain and maintain written instructions from such accounts with respect to positions which are eligible for offsets pursuant to the Margin Offset Rule.

<sup>4</sup> 7 U.S.C. 1 *et seq.*

<sup>5</sup> 17 CFR 242.402(a).

<sup>6</sup> 12 CFR 220.1 *et seq.*

<sup>7</sup> 17 CFR 242.401(a)(9).

<sup>8</sup> 17 CFR 242.403(b).

<sup>9</sup> 17 CFR 242.404(b).

<sup>10</sup> 12 CFR 220.1 *et seq.*

<sup>11</sup> 17 CFR 242.404.

<sup>12</sup> 17 CFR 242.405(a).

<sup>13</sup> 17 CFR 1.17(c)(3).

Paragraph (k) of the Proposed Rule enables a security futures intermediary to liquidate positions in the account of any customer that fails to comply with a required margin call within a reasonable period of time. This provision complements the requirements set forth in Rule 406(a) and (b) under the Act.<sup>14</sup>

Paragraph (1) of the Proposed Rule authorizes CFE to direct any security futures intermediaries that fail to maintain margin requirements for any account in accordance with the Proposed Rule, to immediately liquidate any or all of the positions in such account to eliminate the resulting deficit. This provision is designed to ensure compliance by security futures intermediaries with their obligations under paragraph (k) and is an important function of CFE's oversight over such intermediaries.

The Exchange Act Rules and related provisions of the Act (such as, among others, Sections 6(g)(4)(B)(ii)<sup>15</sup> and 6(h)(3)(L)<sup>16</sup> of the Act) are premised on each self-regulatory organization adopting margin requirements that are functionally equivalent to those contained in the General Margin Rules. Accordingly, the General Margin Rules represent a corollary of, and are designed to give effect to, the Exchange Act Rules and related provisions of the Act.

#### (b) *Margin Offset Rule*

Security futures intermediaries entering into transactions on CFE will be subject to, among other things, Rule 403(b)(1) under the Act,<sup>17</sup> which provides that the margin for each long or short position in a security future will generally be 20 percent of the current market value of such security future. As discussed above, this requirement is reflected in paragraph (c) of the General Margin Rules. Pursuant to Rule 403(b)(2) under the Act,<sup>18</sup> however, a self-regulatory authority may set the required initial or maintenance margin level for offsetting positions involving security futures and related positions at a level lower than the level that would apply if such positions were margined separately based on the aforementioned 20 percent requirement, provided the rules establishing such lower margin levels meet the criteria set forth in Section 7(c)(2)(B) of the Act.<sup>19</sup>

That Section requires, in relevant part, that:

“(I) The margin requirements for a security futures product be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of the [Act]; and

(II) Initial and maintenance margin levels for a security future product not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 6(a) of the [Act], other than an option on a security future.”

CFE is proposing the Margin Offset Rule pursuant to, and in reliance on, Rule 403(b)(2) under the Act.<sup>20</sup> At the core of the Margin Offset Rule will be the table of offsets contained in proposed Schedule A to Chapter 5 of CFE's Rules, which describes in detail the margin offsets available with respect to particular combinations of security futures and related positions. Such Schedule A is substantively identical to the table of offsets included in the release by the CFTC and the Commission on Customer Margin Rules Relating to Security Futures (the “Customer Margin Release”). While the table differs in certain specified respects from similar tables in effect for exchange-traded options, the CFTC and Commission acknowledged in the Customer Margin Release that these limited differences are warranted by different characteristics of the instruments to which they relate. For the reasons set forth above, CFE believes that the Margin Offset Rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to CFE.

#### (c) *Market Maker Exclusion*

Rule 400(c)(2)(v) under the Act<sup>21</sup> permits a national securities exchange to adopt rules containing specified requirements for security futures dealers, on the basis of which the financial relations between security futures intermediaries, on the one hand, and qualifying security futures dealers, on the other hand, are excluded from the margin requirements contained in the Exchange Act Rules. Any rules so adopted by an exchange must meet the criteria set forth in Section 7(c)(2)(B) of the Act,<sup>22</sup> which is reproduced in relevant part under section (b) above.

CFE is proposing the Market Maker Exclusion pursuant to, and in reliance

on, Rule 400(c)(2)(v) under the Act.<sup>23</sup> CFE may select certain of its TPHs or Authorized Traders to serve as market makers with respect to security futures contracts in accordance with proposed CFE Policy and Procedure VII. From time to time, CFE may adopt other programs pursuant to CFE Rule 514 under which TPHs or Authorized Traders may be designated as market makers with respect to one or more security futures contracts in order to provide liquidity and orderliness in the relevant market or markets.

The Market Maker Exclusion as proposed reflects all of the criteria and limitations set forth in Rule 400(c)(2)(v) under the Act.<sup>24</sup> Specifically, as contemplated by the Customer Margin Release, the Market Maker Exclusion specifies the circumstances under which a Market Maker will be considered to “hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis.” Under the Market Maker Exclusion, a Market Maker satisfies this condition if such Market Maker either:

(i) provides continuous two-sided quotations throughout the trading day for all delivery months of security futures representing a meaningful proportion of the total trading volume on the CFE from security futures in which that Market Maker is designated as a Market Maker, subject to relaxation during unusual market conditions as determined by the CFE (such as a fast market in either a security future or a security underlying such security future) at which times such Market Maker must use its best efforts to quote continuously and competitively; and when providing quotations, quotes with a maximum bid/ask spread of no more than the greater of \$0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future; or

(ii) responds to at least 75% of the requests for quotation for all delivery months of security futures representing a meaningful proportion of the total trading volume on CFE from security futures in which that Market Maker is designated as a Market Maker, subject to relaxation during unusual market conditions as determined by CFE (such as a fast market in either a security future or a security underlying such security future) at which times such Market Maker must use its best efforts to quote competitively; and when responding to requests for quotation, quotes within five seconds with a

<sup>14</sup> 17 CFR 242.406(a) and (b).

<sup>15</sup> 15 U.S.C. 78f(g)(4)(B)(ii).

<sup>16</sup> 15 U.S.C. 78f(h)(3)(L).

<sup>17</sup> 17 CFR 242.403(b)(1).

<sup>18</sup> 17 CFR 242.403(b)(2).

<sup>19</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>20</sup> 17 CFR 242.403(b)(2).

<sup>21</sup> 17 CFR 242.400(c)(2)(v).

<sup>22</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>23</sup> 17 CFR 242.400(c)(2)(v).

<sup>24</sup> 17 CFR 242.400(c)(2)(v).

maximum bid/ask spread of no more than the greater of \$0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

These two alternative standards proposed by CFE generally follow examples given in the Customer Margin Release. These standards are also identical to OneChicago Rules 515(n)(ii)(C)(1) and (2), except that the CFE standards relate only to security futures contracts and are specifically identified as such in the CFE standards. Although OneChicago Rules 515(n)(ii)(C)(1) and (2) refer generally to "contracts" (and not security futures contracts) because OneChicago only trades security futures, the effect of the both exchanges' rules are identical since what is being measured is the trading volume of security futures contracts.

(d) *Security Futures Market Maker Program*

Pursuant to CFE Rule 514, CFE is proposing to adopt a market maker program in which TPHs or Authorized Traders may be designated as market makers in respect to one or more CFE security futures contracts. The proposed rule change sets forth the procedures necessary for members to be designated as market makers and the policies in relation to such designation.

The proposed rule change reiterates the qualifications that TPHs and Authorized Traders must meet pursuant to proposed CFE Rule 517(n) to qualify for the market maker exclusion from customer margin for security futures contracts. In addition, the proposed rule change makes clear that under Chapter 7 of the CFE rules, failure to comply with CFE rules or the margin rules adopted by the Commission and the CFTC are subject to disciplinary action. The appropriate sanctions for any such failure shall include, without limitation, a revocation of such market maker's registration as a dealer in security futures.

Under the proposed rule change, a TPH or Authorized Trader seeking a market maker designation for one or more security futures contracts must submit a Market Maker Registration Form to CFE. By signing the registration form, such person confirms that it meets and will continue to meet the qualifications to act as a market maker in security futures contracts in accordance with CFE rules. The registration form requires the listing of all the security futures contracts in which such person will act as market makers. The registration form also requires the identification of the qualifying market maker category under CFE Rule 517(n).

The proposed rule change establishes that CFE will assign to the TPH or Authorized Trader all security futures contracts listed by such person on its registration form, unless CFE provides written notice to such person identifying any security futures contracts for which such assignment is withheld. Under the proposed rule change, for any calendar quarter, a market maker may change the list of security futures contracts for which it is designated by filing a revised registration form prior to the last trading day in such calendar quarter. Such change in security futures contract designation will be effective retroactive to the first trading day of such quarter. The proposed rule change also makes clear that each market maker is responsible for maintaining books and records that confirm that it has fulfilled its quarterly obligations under the market maker category as elected on its registration form for all designated security futures contracts for that quarter. Under the proposal, each market maker would also be required to maintain such books and records for every security futures contract and for each calendar quarter in which its designation as market maker in security futures contracts is maintained.

In addition, the proposed rule change sets forth the requirements that must be met to qualify as a "dealer" in security futures contracts within the meaning of Section 1256(g)(9) of the Internal Revenue Code of 1986, as amended (the "Code").<sup>25</sup> Under the proposed rule change, to qualify as a dealer within the meaning of the Code a TPH or Authorized Trader is required (i) to register as a market maker for purposes of CFE's margin rules under Category 1 or 2 (CFE Rule 517(n)(ii)(C)(1) or (2)); (ii) to undertake in its registration form to provide quotations for all products specified for the market maker exclusion from the CFE margin rules; and (iii) for each delivery month to quote a minimum size of:

(A) Ten contracts of a product not covered by (B) or (C) below;

(B) Five contracts of a product specified by the market maker for delivery months other than the next two delivery months trading at the time the quotations are made; and

(C) One contract of any single stock futures product where the average market price for the underlying stock was \$100 or higher for the preceding calendar month or for each delivery month of any futures contract on a narrow-based security index, as defined by Section 1a(25) of the CEA.

CFE believes that the General Margin, Margin Offset, and Market Maker Exclusion Rules are consistent with Commission and CFTC rules and regulations, except in those instances explained above pursuant to which CFE rules are consistent with parallel rules of OneChicago. CFE also believes the proposed security futures market maker program will provide liquidity and orderliness in the market for CFE security futures contracts. Accordingly, CFE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>26</sup> Specifically, CFE believes the proposed rule change is consistent with the Section 6(b)(5)<sup>27</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither received nor solicited written comments on the proposal.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-CFE-2005-02 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 20549-9309.

<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 26 U.S.C. 1256(g)(9).

All submissions should refer to File Number SR-CFE-2005-02. 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-CFE-2005-02 and should be submitted on or before October 3, 2005.

#### IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

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 national securities exchange.<sup>28</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>29</sup> which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule change is consistent with Section 7(c)(2)(B) of the Act,<sup>30</sup> which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures and prevent systemic

risk. The Commission also believes that the proposed rule change is consistent with the customer margin rules set forth in Rules 400 through 406 under the Act.<sup>31</sup>

The Exchange has requested that the Commission approve this proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission believes that nothing in this proposed rule change raises any new, unique, or substantive issues from those previously raised in SR-OC-2002-01, as amended, which rule filing sets forth OneChicago's margin requirements for security futures, and in SR-OC-2004-01, which rule filing sets forth OneChicago's market maker program. The Exchange's proposed rules set forth herein are identical to the OneChicago's rules approved by the Commission in SR-OC-2002-01, as amended, and SR-OC-2004-01, with the exception of one market maker exemption from the margin rules which the CFE excluded because it did not correspond to its current practices. Further, the Exchange is ready to begin trading subject to the approval of this proposed rule change and the Exchange's opening would enhance competition in the marketplace. Accordingly, the Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that it is consistent with Section 19(b)(2) of the Act<sup>32</sup> to approve CFE's proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (File No. SR-CFE-2005-02) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-4949 Filed 9-9-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52379; File No. SR-CHX-2005-23]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to the Assignment of Securities to Specialists

September 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 25, 2005, the Chicago Stock Exchange, Inc. (the "CHX" or the "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 CHX. 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 amend Rule 1 of Article XXX relating to Registration and Appointment to permit its Committee on Specialist Assignment and Evaluation ("CSAE") to, in special circumstances, assign securities<sup>3</sup> to a specialist firm without the firm first identifying a particular co-specialist to trade the securities, so long as the specialist firm promptly provides the CSAE with the name of the co-specialist that would trade the issues, and the CSAE concludes that the co-specialist is qualified to trade the issues. Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deletions are in [brackets].

#### ARTICLE XXX

##### Specialists

##### Registration and Appointment

Rule 1. No change.

\* \* \* Interpretations and Policies:

##### .01 Committee on Specialist Assignment and Evaluation

\* \* \* \* \*

<sup>28</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>31</sup> 17 CFR 242.400-406.

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission notes that the Exchange uses the terms "security(ies), stock(s) and issue(s)" interchangeably.

## II. Assignment Procedures

When a security is to be assigned or reassigned, the Committee will notify all specialist units and invite applications. This notice will include all relevant facts about the security. If the Committee believes that special qualifications should be sought in the successful applicant, the Committee after satisfying itself that these are reasonable and not exclusionary, should direct that they be included in the notice.

It should be noted that assignments are made to specialist units but that, *except as provided below in paragraph 6*, the specialist unit must indicate the individual co-specialist who will be registered in that stock. The registration of a co-specialist, however, does not diminish the responsibility of the specialist unit for the stock assigned to it.

\* \* \* \* \*

1. Applications. In applying, a specialist unit should state the reasons why it believes the stock should be assigned to it. A standard application form is available from the Exchange and should be used for this purpose. *Except as otherwise provided in paragraph 6, below*, t[he] application must, at a minimum, include the name and background of the co-specialist who will normally be trading the security and his ability and experience relative to the issue being applied for. Also, if any special or unique characteristics of the security have been identified by the Committee, such as unusually high capital requirements or institutional participation making trading difficult, the applicant should specifically note and comment on its ability to deal with the special characteristics.

\* \* \* \* \*

6. *Assignment process when posting of large groups of stocks. If circumstances require the Exchange to allocate more than 100 stocks at any specific time, the Exchange recognizes that it may be difficult for a specialist firm to identify the specific co-specialist who would be assigned to trade each of the issues for which that firm seeks an assignment. In those circumstances, the CSAE may make a temporary 30-day assignment to a specialist firm (based on the firm's overall demonstrated ability, experience and financial responsibility, as well as the overall best interests of the Exchange). The CSAE may make that temporary assignment final if: (1) The specialist firm, within 15 days of the temporary assignment, provides the CSAE with the identification of the individual co-specialist who will be trading the*

*stock(s); and (2) the CSAE, after evaluating that co-specialist's demonstrated ability and experience, finds that the co-specialist is qualified to trade the stock(s). If the CSAE determines that the co-specialist is not qualified to trade the stock(s), the stock(s) shall be immediately posted for assignment.*

\* \* \* \* \*

## 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 changes 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

The Exchange states that the Exchange's CSAE is responsible for assigning securities to specialist firms for trading.<sup>4</sup> Under current Interpretation and Policy .01 of Rule 1 of Article XXX, each participant firm seeking to act as a CHX specialist in a particular issue is required to identify, during the application process, the individual co-specialist who will be trading that security.<sup>5</sup> The Exchange believes that this process works efficiently when the CSAE is assigning a few securities at a time.

On rare occasions, however, the CSAE may need to assign larger groups of securities. In those situations, the Exchange represents that it may be difficult and impractical for specialist firms to identify individual co-specialists for all of the securities for which the firms will apply because, among other things, the firms may need to hire new co-specialists to trade the securities. To address these limited circumstances, the Exchange has proposed a change in its assignment rule that would allow the CSAE to make a temporary 30-day assignment to a specialist firm without the firm first identifying a particular co-specialist to trade the securities. According to the

Exchange, the assignment could not become final (and the firm could not begin trading the securities) unless: (1) The specialist firm, within 15 days of the temporary assignment, provides the CSAE with the identification of the individual co-specialist who will be trading the securities; and (2) the CSAE, after evaluating that co-specialist's demonstrated ability and experience, finds that the co-specialist is qualified to trade the securities. If the CSAE determines that the co-specialist is not qualified to trade the securities, the securities would be immediately posted for assignment to other specialist firms.

The Exchange believes that the proposal is narrowly tailored to provide an efficient and effective process for assigning securities in those rare situations when a large number of securities must be assigned in a relatively short period of time. As an initial matter, the proposed rule change would apply only in instances where the CSAE is allocating more than 100 stocks at any specific time, a circumstance that has occurred rarely at the Exchange. Additionally, the proposal would not allow a specialist firm to begin trading a security until it had notified the CSAE of the individual co-specialist who would trade a security, and the CSAE had determined that that individual was qualified to do so. Finally, the proposal would require the CSAE to determine which specialist firm should trade securities based on criteria that are consistent with those set out in the Exchange's rules. In these cases, the CSAE would review a firm's overall demonstrated ability, experience and financial responsibility, as well as the overall best interests of the Exchange.<sup>6</sup> The Exchange further represents that the best interests of the Exchange incorporates a variety of issues, including the issue of concentration of specialist assignments on the Exchange.<sup>7</sup> The Exchange also believes that the CSAE should be cognizant of concentration issues and should allocate securities in a manner that, consistent with the other factors and requirements of the assignment process, minimizes concentration as much as possible.<sup>8</sup>

<sup>6</sup> Under the Exchange's assignment rules, the CSAE ordinarily considers the demonstrated ability of the identified co-specialist, along with the firm's financial responsibility and the overall best interests of the Exchange. See Article XXX, Rule 1.01.III.1.

<sup>7</sup> Telephone conversation of August 26, 2005, between Ellen Neely, President and General Counsel, CHX and Hong-Anh Tran, Special Counsel, Division of Market Regulation, Commission.

<sup>8</sup> *Id.*

<sup>4</sup> See Article IV, Rule 6, and Article XXX, Rule 1.

<sup>5</sup> See Article XXX, Rule 1.01.II.1.

## 2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup> In particular, the Exchange believes that the proposed change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> 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, protect investors and the public interest by allowing the Exchange to establish an effective and efficient process to permit the assignment of a large number of securities within a relatively short period of time.

### *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.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2005-23 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CHX-2005-23. 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 CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2005-23 and should be submitted on or before October 3, 2005.

## IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission has considered the Exchange's proposed rule change, and finds that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange represents that it is currently considering the assignment of a large number of securities that are temporarily assigned to certain CHX specialist firms. The Exchange further represents that it needs to promptly make final assignment decisions for these securities. The Commission believes

that the proposal should facilitate the ability of the Exchange to expeditiously assign a large number of securities (*i.e.*, exceeding 100 securities) in a relatively short time frame in the rare circumstances it is necessary to do so, without compromising the overall interests of the assignment process.

Pursuant to Section 19(b)(2) of the Act,<sup>14</sup> 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**. The Commission notes that the Exchange's assignment procedures, pursuant to Interpretation and Policy .01 of Rule 1 of Article XXX, generally requires that, during the application process, specialist firms identify the co-specialist (or co-specialists) whom the specialist firm believes will trade the securities. Because of the large number of securities that are available for allocation in this case, the Commission believes that the specialist firms might, in some cases, find it difficult to identify individual co-specialists for all of the securities for which they apply. The Commission believes that the proposed rule change is necessary to facilitate the orderly assignment of a large number of securities within a relatively short period of time. The Commission expects the Exchange to assign securities, on a 30-day temporary basis, to a particular specialist firm based on the firm's overall demonstrated ability, experience and financial responsibility, subject to the firm's identification (within 15 days of the assignment) of the particular co-specialist(s) who will trade the securities and the Exchange CSAE's determination that the individual co-specialist(s) have the demonstrated ability and experience to trade the issues. In addition, the Commission notes that assignment could not become final and the firm could not begin trading securities allocated pursuant to the proposal unless the firm promptly provided the Exchange's CSAE with the name of the co-specialist, and the CSAE concluded that the co-specialist is qualified to trade the issues. Finally, the Commission expects the CSAE to be cognizant of the issue of concentration of specialist securities assignments on the Exchange, consistent with the representations of the Exchange

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

referenced above. 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.<sup>15</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CHX-2005-23) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-4948 Filed 9-9-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52380; File No. SR-Phlx-2005-56]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Pilot Program on Dividend Spread and Merger Spread Fee Caps Until March 1, 2006

September 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. The Exchange designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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

Phlx proposes to extend for a period of six months its fee caps on equity option transaction and comparison charges on dividend spread transactions<sup>5</sup> and merger spread transactions.<sup>6</sup> The current fee caps are in effect as a pilot program that expires on September 1, 2005. The Exchange proposes to extend the pilot program for the fee caps for a six-month period until March 1, 2006. The text of the proposed rule change is available on the Exchange's Web site (<http://www.phlx.com>), at the Office of the Secretary, Phlx, 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, Phlx 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. Phlx 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

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges on merger spread transactions and dividend spread transactions executed on the same trading day in the same options class. Specifically, ROTs' and specialists' equity option transaction and comparison charges are capped at \$1,750 for transactions effected pursuant to a merger spread strategy or

<sup>5</sup> For purposes of this proposal, a "dividend spread" transaction is any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options. See Securities Exchange Act Release No. 48983 (December 23, 2003), 68 FR 75703 (December 31, 2003) (SR-Phlx-2003-80).

<sup>6</sup> For purposes of this proposal, the Exchange defines a "merger spread" transaction as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock. See Securities Exchange Act Release No. 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19).

dividend spread strategy when the dividend is \$0.25 or greater. However, for dividend spread transactions for a security with a declared dividend or distribution of less than \$0.25, the ROTs' and specialists' equity option transaction and comparison charges are capped at \$1,000 for transactions effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.<sup>7</sup> The purpose of extending the pilot program for a six-month period is to continue to attract additional liquidity to the Exchange and to remain competitive.<sup>8</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it is establishing or changing a due, fee, or other charge applicable only to the Exchange's members. 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

<sup>7</sup> Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread strategy or merger spread strategy. See notes 5 and 6, *supra*.

<sup>8</sup> Similar to the Exchange's current rebate process, members who wish to benefit from the fee cap are required to submit to the Exchange a written rebate request with supporting documentation.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> *Id.*

<sup>17</sup> CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-56 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-Phlx-2005-56. 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-Phlx-2005-56 and should be submitted on or before October 3, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05-18005 Filed 9-9-05; 8:45 am]

**BILLING CODE 8010-01-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for Waiver of Aeronautical Land-Use Assurance Bolton Field Airport, Columbus, OH

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport designated aeronautical use to non-aeronautical use and to authorize the release of 1.5411 acres of airport property for an exchange of property between the Columbus Regional Airport Authority (CRAA) and the City of Columbus. The land currently houses a fire station that will remain on the site. The land was conveyed to the City of Columbus in Deed Volume 2806, page 644 of the Recorder's Office, Franklin County, Ohio. The land was acquired by the City of Columbus with funding from Federal Grant 8-39-0026-01. There are no impacts to the airport by allowing the airport to dispose of the property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. In exchange, the CRAA will receive a parcel of land (43.562 acres) currently being used as a golf course facility adjacent to Port Columbus International Airport. This parcel is partially located in the existing Runway Protection Zone for Runway 10R-28L and is partially located in the Runway Protection Zone for future Runway 10R-28L as indicated on the approved Airport Layout Plan (ALP) for Port Columbus International Airport. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATES:** Comments must be received on or before October 12, 2005.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

#### FOR FURTHER INFORMATION CONTACT:

Mary W. Jagiello, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO-608, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734) 229-2956/FAX Number (734) 229-2950. Documents reflecting this FAA action may be reviewed at this same location or at Bolton Field Airport, Columbus, Ohio.

**SUPPLEMENTARY INFORMATION:** Following is a legal description of the property located in Columbus, Franklin County, Ohio, and described as follows:

Beginning for reference at Franklin County Monument #4448, located at the intersection of Alkire Road and Bukey Road (abandoned);

Thence north 87°12'49" West along the centerline of Alkire Road, a distance of 1322.81 feet to a railroad spike set and the true place of beginning;

Thence South 02°47'11" West passing a 3/4" iron pipe and cap set at 30.00 feet, a total distance of 274.25 feet to a 3/4" iron pipe and cap set;

Thence North 87°12'49" West, a distance of 235.89 feet to a 3/4" iron pipe and cap set;

Thence North 00°55'14" West passing 3/4" iron pipes and caps at 88.48 feet and 244.77 feet, a total distance of 274.83 feet to a railroad spike set in the centerline of Alkire Road;

Thence South 87°12'49" East along the centerline of said Alkire Road, a distance of 253.66 feet to the place of beginning, containing 1.5411 acres of land and being subject to all legal highways, easements and restrictions of record.

Bearings are based on State Plane Coordinates NAD 83. All 3/4" iron pipes and caps set has the logo S5669.

Issued in Romulus, Michigan on August 5, 2005.

**Winsome A. Lenfert,**

*Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 05-17989 Filed 9-9-05; 8:45 am]

**BILLING CODE 4910-13-M**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Marine Transportation System National Advisory Council

**ACTION:** National Advisory Council public meeting.

**SUMMARY:** The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold

a meeting to discuss MTS needs, regional MTS outreach and education initiatives, an Action Plan for the MTS, and other issues. A public comment period is scheduled for 8:30 a.m. to 9 a.m. on Wednesday, September 28, 2005. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by September 20, 2005. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by October 5, 2005.

**DATES:** The meeting will be held on Tuesday, September 27, 2005, from 1 p.m. to 5 p.m. and Wednesday, September 28, 2005, from 8:30 a.m. to 3 p.m.

**ADDRESSES:** The meeting will be held in the Peabody Memphis, 149 Union Avenue, Memphis, TN 38103. The hotel's phone number is (901) 529-4000.

**FOR FURTHER INFORMATION CONTACT:** Richard Lolich, (202) 366-4357; Maritime Administration, MAR-830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; [richard.lolich@dot.gov](mailto:richard.lolich@dot.gov).

**Authority:** 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101-6. 1005; DOT Order 1120.3B.

Dated: September 7, 2005.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 05-18032 Filed 9-9-05; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### International Standards on the Transport of Dangerous Goods; Public Meetings

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to advise interested persons that PHMSA will conduct a public meeting in preparation for the twentieth meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods

Panel to be held October 24–November 4, 2005 in Montreal, Canada.

**DATES:** Tuesday, October 18, 2005, 10 a.m.–12 p.m.

**ADDRESSES:** DOT Headquarters, Nassif Building, Room 6332, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Richard, Director, Office of International Standards, Office of Hazardous Materials Safety and Hazardous Materials Safety Administration, Department of Transportation, Washington, DC 20590; (202) 366-0656.

**SUPPLEMENTARY INFORMATION:** The primary purpose of this public meeting will be to discuss draft U.S. positions on the proposals that will be considered during the 20th Meeting of the ICAO Dangerous Goods Panel (DGP 20). Agenda items include:

*Agenda Item 1:* Development of proposals; if necessary, for amendments to Annex 18—The Safety Transport of Dangerous Goods by Air;

*Agenda Item 2:* Development of recommendations for amendments to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284) for incorporation in the 2007–2008 Edition;

*Agenda Item 3:* Development of recommendations for amendments to the Supplement to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc. 9284) for incorporation in the 2007–2008 Edition;

*Agenda Item 4:* Amendments to Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods (Doc 9481); and

*Agenda Item 5:* Resolution, where possible, of the non-recurrent work items identified by the Commission or the panel;

(a) Principles governing the transport of dangerous goods on cargo only aircraft;

(b) Reformatting of the packing instructions; and

(c) Review of provisions for dangerous goods carried by passengers and crew.

For more information on the ICAO Dangerous Goods Panel visit PHMSA's International Standards Web site at <http://hazmat.dot.gov/regs/intl/intstandards.htm>.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 05-17990 Filed 9-9-05; 8:45 am]

**BILLING CODE 4910-60-M**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 2, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before October 12, 2005 to be assured of consideration.

#### Internal Revenue Service (IRS)

*OMB Number:* 1545-0967.

*Type of Review:* Extension.

*Title:* U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.

*Form:* IRS form 8453-F.

*Description:* Form 8453-F is used to secure taxpayer signature and declarations in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns. This form, together with the electronic and magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).

*Respondents:* Individuals or Households and Business or other-for-profit.

*Estimated Total Burden Hours:* 880 hours.

*OMB Number:* 1545-1004.

*Type of Review:* Revision.

*Title:* U.S. Income Tax Return for Real Estate Investment Trusts.

*Form:* IRS form 1120-REIT.

*Description:* Form 1120-REIT is filed by a corporation, trust or association electing to be taxed as a REIT in order to report its income and deductions, and to compute its tax liability. IRS uses Form 1120-REIT to determine whether the REIT has correctly reported its income, deductions and tax liability.

*Respondents:* Business or other-for-profit.

*Estimated Total Burden Hours:* 46,490 hours.

*OMB Number:* 1545-1350.

*Type of Review:* Extension.

*Title:* Installment Agreement Request.

*Form:* IRS form 9465.

*Description:* Form 9465 is used by the public to provide identifying account

information and financial ability to enter into an installment agreement for payment of taxes. The form is used by IRS to establish a payment plan for taxes owed to the federal government, if appropriate, and to inform taxpayers about the application fee and their financial responsibilities.

*Respondents:* Individuals or households.

*Estimated Total Burden Hours:* 805,600 hours.

*Clearance Officer:* Glenn P. Kirkland, (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Michael A. Robinson,**

*Treasury PRA Clearance Officer.*

[FR Doc. 05-17962 Filed 9-9-05; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Public Meeting of the President's Advisory Panel on Federal Tax Reform

**AGENCY:** Department of the Treasury.

**ACTION:** Change in meeting date.

**SUMMARY:** This notice advises all interested persons of change in the date of a public meeting of the President's Advisory Panel on Federal Tax Reform.

**DATES:** The meeting scheduled to be held on Thursday, September 15, 2005, has been postponed. This meeting will be rescheduled and announced at a later date.

**FOR FURTHER INFORMATION CONTACT:** The Panel staff at (202) 927-2TAX (927-2829) (not a toll-free call) or e-mail [info@taxreformpanel.gov](mailto:info@taxreformpanel.gov) (please do not send comments to this box). Additional information is available at <http://www.taxreformpanel.gov>.

Dated: September 8, 2005.

**Mark S. Kaizen,**

*Designated Federal Officer.*

[FR Doc. 05-18143 Filed 9-9-05; 8:45 am]

**BILLING CODE 4811-33-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 5305-SEP

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305-SEP, Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

**DATES:** Written comments should be received on or before November 14, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [RJoseph.Durbala@irs.gov](mailto:RJoseph.Durbala@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

*OMB Number:* 1545-0499.

*Form Number:* 5305-SEP.

*Abstract:* Form 5305-SEP is used by an employer to make an agreement provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP.

*Current Actions:* There are no changes being made to form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 100,000.

*Estimated Time Per Respondent:* 4 hr. 57 min.

*Estimated Total Annual Burden Hours:* 495,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### *Request for Comments:*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 2, 2005.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5-4950 Filed 9-9-05; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[IA-38-90]

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA-38-90 (TD 8382), Penalty on Income Tax Return

Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund (§§ 1.6694-2(c) and 1.6694-3(e)).

**DATES:** Written comments should be received on or before November 14, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at [RJoseph.Durbala@irs.gov](mailto:RJoseph.Durbala@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or Claim for Refund.

*OMB Number:* 1545-1231.

*Regulation Project Number:* IA-38-90 (Final).

*Abstract:* These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and individuals or households.

*Estimated Number of Respondents:* 100,000.

*Estimated Time Per Respondent:* 30 min.

*Estimated Total Annual Burden Hours:* 50,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 2, 2005.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5-4951 Filed 9-9-05; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Notice 99-43**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 99-43, Nonrecognition Exchanges under Section 897.

**DATES:** Written comments should be received on or before November 14, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue

NW., Washington, DC 20224, or through the Internet at [RJoseph.Durbala@irs.gov](mailto:RJoseph.Durbala@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Nonrecognition Exchanges under Section 897.

*OMB Number:* 1545-1660.

*Notice Number:* Notice 99-43.

*Abstract:* Notice 99-43 announces modification of the current rules under Temporary Regulation section 1.897-6T(a)(1) regarding transfers, exchanges and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The notice provides that, contrary to section 1.897-6T(a)(1), a foreign taxpayer will not recognize a gain under Code section 897(e) for an exchange described in Code section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same divided rights, voting power, liquidation preferences, and convertability as the shares exchanged without any additional rights or features.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and individuals or households.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 6, 2005.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5-4952 Filed 9-9-05; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service**

[REG-209040-88]

**Proposed Collection; Comment Request for Regulation Project**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-209040-88, Qualified Electing Fund Elections (§ 1.1295).

**DATES:** Written comments should be received on or before November 14, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of this regulation should be directed to R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualified Electing Fund Elections.

*OMB Number:* 1545-1514.

*Regulation Project Number:* REG-209040-88.

*Abstract:* This regulation permits certain shareholders to make a special election under Internal Revenue Code section 1295 with respect to certain preferred shares of a passive foreign investment company. This special election operates in lieu of the regular section 1295 election and requires less annual reporting. Electing preferred shareholders must account for dividend income under the special rules of the regulation, rather than under the general income inclusion rules of section 1293.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit organizations, and individuals.

*Estimated Number of Respondents:* 1,030.

*Estimated Time Per Respondent:* Varies.

*Estimated Total Annual Burden Hours:* 600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 2, 2005.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5-4953 Filed 9-9-05; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for REG-110311-98 (Final)**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG-110311-98 (Final), Corporate Tax Shelter Registration.

**DATES:** Written comments should be received on or before November 14, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Corporate Tax Shelter Registration.

*OMB Number:* 1545-1687.

*Form Number:* REG-110311-98 (Final).

*Abstract:* The regulations finalize the rules relating to the filing of certain

taxpayers of a disclosure statement with their Federal tax returns under IRC § 6111(a), the rules relating to the registration of confidential corporate tax shelters under section 6011(d), and the rules relating to the list maintenance requirements under section 6112.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and Households, Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 4.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 1.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 5, 2005.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5-4954 Filed 9-9-05; 8:45 am]

**BILLING CODE 4830-01-P**

## UNITED STATES INSTITUTE OF PEACE

### Sunshine Act Meeting

**DATE/TIME:** Thursday, September 22, 2005, 9:15 a.m.–3.45 p.m.

**LOCATION:** 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

**STATUS:** Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

**AGENDA:** September 2005 Board Meeting; Approval of Minutes of the One Hundred Nineteenth Meeting (June 15–17, 2005) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Fiscal Years 2006 and 2007 Budget Review; Organizational Structure Review; Approval of 2005 Unsolicited and Solicited Grant; Other General Issues.

**CONTACT:** Tessie Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: September 7, 2005.

**Patricia P. Thomson,**

*Executive Vice President, United States Institute of Peace.*

[FR Doc. 05–18181 Filed 9–8–05; 4:07 pm]

**BILLING CODE 6820-AR-M**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (Fiduciary)]

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant qualification as a fiduciary.

**DATES:** Written comments and recommendations on the proposed collection of information should be

received on or before November 14, 2005.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail [irmnkess@vba.va.gov](mailto:irmnkess@vba.va.gov). Please refer to “OMB Control No. 2900–New (Fiduciary)” in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Fiduciary Statement in Support of Appointment, VA form 21–0792.

*OMB Control Number:* 2900–New (Fiduciary).

*Type of Review:* New collection.

*Abstract:* Individual's seeking appointment as a fiduciary of VA beneficiaries complete VA Form 21–0792. VA uses the data collected on VA Form 21–0792 to determine the individual's qualification.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,875 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 7,500.

Dated: August 31, 2005.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst Records Management Service.*

[FR Doc. E5–4970 Filed 9–9–05; 8:45 am]

**BILLING CODE 8320-01-P**

# Corrections

Federal Register

Vol. 70, No. 175

Monday, September 12, 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.

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **White River National Forest; and Grand Mesa, Uncompahgre, and Gunnison National Forests; Bull Mountain Natural Gas Pipeline**

##### *Correction*

In notice document 05-17179 beginning on page 51329 in the issue of

Tuesday, August 30, 2005, make the following corrections:

1. On page 51329, in the second column, the third line from the bottom, "are" should read "area".
2. On the same page, in the third column, in the first full paragraph, in the second line "252.5 miles" should read "25.5 miles".
3. On the same page, in the same column, in the same paragraph, in the sixth line, "Grad" should read "Grand".
4. On the same page, in the same column, in the same paragraph, in the 10th line, "in" should read "on".
5. On the same page, in the same column, in the same paragraph, in the 18th line, "connects the" should read "connects to the".
6. On the same page, in the same column, in the second paragraph, in the

second line, "proposal" should read "proposed".

7. On page 51330, in the third column, in the 25th line from the top, "39 part 192" should read "49 part 192".

8. On page 51331, in the first column, in the third paragraph, in the ninth line, "its" should read "it".

9. On page 51332, in the first column, under the heading "**Lead and Cooperating Agencies**" in the second line "NRPA" should read "NEPA".

[FR Doc. C5-17179 Filed 9-9-05; 8:45 am]

BILLING CODE 1505-01-D



# Federal Register

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**Monday,  
September 12, 2005**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Part 26**

**Protections for Subjects in Human  
Research; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 26**

[OPP-2003-0132; FRL-7728-2]

RIN 2070-AD57

**Protections for Subjects in Human Research****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes and invites public comment on a rulemaking to ban intentional dosing human testing for pesticides when the subjects are pregnant women or children, to formalize and further strengthen existing protections for subjects in human research conducted or supported by EPA, and to extend new protections to adult subjects in intentional dosing human studies for pesticides conducted by others who intend to submit the research to EPA. This proposal, the first of several possible Agency actions, focuses on third-party intentional dosing human studies for pesticides, but invites public comment on alternative approaches with broader scope.

**DATES:** Comments must be received on or before December 12, 2005. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before October 12, 2005.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number OPP-2003-0132, by one of the following methods:

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

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

- *E-mail:* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2003-0132.

- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2003-0132. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of

Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- *Hand Delivery:* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2003-0132. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

- *Instructions:* Direct your comments to docket ID number OPP-2003-0132. 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](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the [regulations.gov](http://www.regulations.gov) websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.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.

- *Docket.* All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** William L. Jordan, Mailcode 7501C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-1049; fax number: (703) 308-4776; e-mail address: [jordan.william@epa.gov](mailto:jordan.william@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule, the first of several possible Agency actions, would significantly strengthen the ethical framework for conducting and reviewing human studies, especially intentional dosing human studies for pesticides.

With respect to human research conducted by EPA ("first-party research"), or by others with EPA's support ("second-party research"), this proposed rule would: (1) Categorically prohibit any intentional dosing studies involving pregnant women or children as subjects; and (2) adopt the Department of Health and Human Services (HHS) regulations that provide additional protections to pregnant women and children as subjects of other than intentional dosing studies.

With respect to human research conducted by third parties--i.e., by others without any support from EPA or other federal government agencies--the proposed rule would: (1) Categorically prohibit any third-party intentional dosing studies for pesticides involving pregnant women or children as subjects; (2) extend the provisions of the Federal Policy for the Protection of Human Subjects of Research (the "Common Rule") to all other third-party intentional dosing human studies intended for submission to EPA under the pesticide laws; (3) require, before testing is initiated, submission to EPA of protocols and related information for proposed research covered by this extension of the Common Rule; and (4) require information about the ethical conduct of covered human studies when the results of the research are submitted to EPA.

In addition, the proposed rule would: (1) Establish an independent Human Studies Review Board to review proposals for covered intentional dosing human research and reports of completed research; (2) specify

measures EPA would consider to address non-compliance with the provisions of a final rule along the lines of this proposal; (3) define the ethical standards EPA would apply in deciding whether to rely on relevant, scientifically sound data derived from intentional dosing human studies for pesticides; and (4) forbid EPA to rely in its decision-making under the pesticide laws on human research involving intentional exposure of pregnant women or children.

This document is organized into 14 units:

- Unit I. contains “General Information” about the applicability of this proposed rule, how to obtain additional information, how to submit comments in response to the request for comments, and certain other related matters.

- Unit II. summarizes the Agency’s goals for this proposed rulemaking and the terms of the proposal itself, and places the proposal in the context of the larger debate over the conduct and regulatory use of research with human subjects.

- Unit III. provides background information about the history of human subjects research protection and about events leading up to this proposal.

- Unit IV. discusses EPA’s proposal to extend the requirements of its codification of the Common Rule, 40 CFR part 26, to third-party intentional dosing human studies for pesticides. (EPA and other federal departments and agencies who have adopted the Common Rule conduct research with human subjects to provide critical information on environmental risks, exposures, and effects in humans. This is referred to in this document as “first-party” research. EPA and other Common Rule departments and agencies also support with contracts, grants, or in other ways research with human subjects conducted by others. This is referred to as “second-party” research. When research with human subjects is conducted by others without support from EPA or other Common Rule departments or agencies, it is referred to as “third-party” research.)

- Unit V. discusses EPA’s proposal to require submission of protocols and other information about proposed third-party intentional dosing human studies for pesticides before the studies begin, so that EPA and an advisory Human Studies Review Board may review and comment on the ethical and scientific aspects of the proposals.

- Unit VI. discusses rulemaking to ban research with pesticides involving intentional dosing of children, and to adopt additional protections, beyond

those in the Common Rule, for children as subjects of other types of research. This ban would apply both to EPA and to regulated third parties.

- Unit VII. addresses rulemaking to ban research with pesticides involving intentional dosing of pregnant women, fetuses, or newborns, and to adopt additional protections, beyond those in the Common Rule, for pregnant women, fetuses, and newborns as subjects of other types of research. This ban, too, would apply both to EPA and to regulated third parties.

- Unit VIII. explains EPA’s decision to defer adoption of additional protections for prisoners as research subjects.

- Unit IX. discusses possible measures that EPA might use to address noncompliance with the requirements of a final rule along the lines of this proposal.

- Unit X. discusses the ethical standards that EPA proposes to use in deciding whether or not to rely on completed human studies in Agency decision-making.

- Unit XI. demonstrates the compliance of this proposal with the requirements in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, regarding third-party intentional dosing human toxicity studies for pesticides.

- Unit XII. discusses EPA’s responses to comments from the Department of Health and Human Services on a draft of this proposal.

- Unit XIII. discusses the Agency’s evaluation of the impacts of this proposal as required under various statutes and Executive Orders.

- Finally, Unit XIV. discusses the Agency’s thinking with respect to the effective date of a final rule.

## I. General Information

### A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those who conduct human research on substances regulated by EPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access

this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of the Code of Federal Regulations (CFR) is available at <http://www.gpoaccess.gov/ecfr/>.

### C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

- ii. 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.

- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- iv. Describe any assumptions and provide any technical information and/or data that you used.

- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- viii. Make sure to submit your comments by the comment period deadline identified.

## II. Summary of EPA Goals and the Context for the Proposed Rulemaking

EPA is charged with protecting public health and the environment by regulating air and water pollutants, pesticides, hazardous wastes, industrial chemicals, and other environmental substances. To meet this responsibility EPA collects and reviews the best available scientific information to understand how these substances may affect human health and the world we live in. The Agency typically considers a wide range of information about each substance, including its potential to cause harm--i.e., its toxicity--and how and at what levels people may be exposed to it--i.e., their exposure. By linking information on toxicity with estimates of exposure, EPA can estimate the risk posed by a substance to an exposed population, and then decide

whether that risk justifies regulation of releases of the substance into the environment.

#### A. How EPA Assesses Risks to People

The Agency's understanding of potential risks to people is usually based on tests performed with laboratory animals. For example, EPA typically requires pesticide companies to perform over 20 different kinds of animal studies to identify or measure toxic effects before a pesticide can be registered for use. These studies differ in the kinds of animals used, the duration of exposure, the age of test animals, and the pathway of exposure--through food, air, or the skin. When they are considered together, they provide a good general understanding of a pesticide's potential effects. Comparable animal data are usually available when EPA makes regulatory decisions about other kinds of environmental substances as well.

Animal studies, however, are not the only source of relevant information for characterizing potential risks. Sometimes EPA can better understand the potential risks of a substance by looking at how people respond when they have been directly exposed to it. For example, EPA uses information from accident and incident reports, in which people may have been exposed to a substance after a spill or some other unintentional release. EPA also uses data from epidemiological studies comparing health outcomes of two otherwise similar groups of people who differ in their level of exposure to a particular substance (e.g., those who work with a chemical vs. those who do not).

In addition to incident and epidemiology data, human exposure studies have also improved EPA's risk assessments. EPA often bases its estimates of potential human exposure to environmental substances on monitoring studies measuring concentrations of a substance in air, water, food, or on surfaces. This kind of information about environmental concentrations can then be used to predict the amount of a substance people will breathe, eat, drink, or absorb through their skin. Sometimes, however, the relationship between environmental concentrations of a substance and potential human exposure is unclear, and can be understood only through research involving human subjects. For example, the actual exposure of a farmer applying a pesticide will depend on such factors as the type of spray equipment used, the amount and kind of pesticide used, the type of protective clothing worn (e.g., gloves, respirator,

long pants), and how many hours are worked each day. To determine more accurately the exposures farmers and other applicators actually receive, EPA requires pesticide companies to measure the amount of pesticide deposited on an applicator's body and clothing during a spray session. The results of studies like this provide critical data about exposures that can be used to define protective standards for pesticide handlers and applicators. Without these and similar studies characterizing the exposures received by individuals in the normal course of their work and daily life, the Agency would not understand adequately either what types of application equipment and protective clothing were necessary for a pesticide to be used safely, or how soon harvesters or others could safely enter pesticide-treated areas.

Another type of human study that can contribute to EPA's risk assessments involves intentional exposure of subjects to low doses of a substance to measure how the substance is absorbed, distributed, metabolized, and excreted in humans. Humans respond to some substances in different ways from animals, and studies of this kind can provide essential support for safety monitoring programs, such as those which analyze and measure the known metabolites of a substance in the blood or urine of workers or others to determine if they've been exposed to the substance.

Although EPA has not and will not use its authorities to require or encourage it, third parties have occasionally conducted and submitted to EPA reports of research involving intentional dosing of human subjects to identify or measure toxic effects. These studies typically involve intentional exposure to an environmental substance in a controlled laboratory or clinical setting.

Decades of experience in reviewing both animal and human studies of all kinds has demonstrated that animal data alone can sometimes provide an incomplete or even a misleading picture of the safety or risks of a substance. Sometimes human data show that people are more sensitive than animals, and support regulatory measures more protective than would be indicated by animal data. This has been the case, for example, for arsenic, certain air pollutants, and certain pesticide active ingredients such as methyl isothiocyanate (MITC) and hexavalent chromium. More often, though, information from human studies confirms insights based on animal testing. Even in these cases, however, the availability of scientifically sound

human data can strengthen the basis for EPA's regulatory actions.

#### B. Societal Concern over Ethically Deficient Human Research

Scientific experimentation involving human beings has raised controversy for a long time. The history of human research contains well-known examples of unethical behavior in the name of science, which have led to reforms in the way the government and others carry out and oversee human research. Through these reforms, the standards for ethical human research have evolved to become progressively more stringent and protective of the subjects of the research. Not all previously conducted human studies, however, met the ethical standards of their own time, and some older research falls well short of today's ethical standards. Even contemporary research is sometimes ethically deficient.

For over 7 years EPA has been at the center of an intense debate about the acceptability of certain intentional dosing human studies for pesticides, and about what to do with human studies which are ethically deficient. In this debate some have argued that EPA should disassociate itself entirely from ethically problematic research behavior by refusing to consider the resulting data in its regulatory decisions. Those who hold this view interpret Agency reliance on an ethically flawed study as an endorsement of the investigators' behavior, and as encouragement to others to engage in similarly problematic research. They also argue that EPA's reliance on ethically deficient human data could directly benefit the wrong-doer. For example, if EPA based a regulatory decision on a human study that shows humans to be less sensitive than animals, the result might be a less stringent regulatory measure that would be advantageous to the company that conducted the study. If the key study was ethically deficient, then the company could benefit from its misconduct.

On the other hand, data from human research has contributed enormously to scientific understanding of the risks posed by every kind of environmental substance. Recognizing the importance of such knowledge to EPA's past regulatory actions, some argue that the Agency should take all relevant and scientifically sound information--not excluding ethically deficient human data--into account in its regulatory decision-making. They argue that any ethical deficiencies are the fault of the researchers, not of EPA. They further argue that by relying on scientifically valid and relevant data from an ethically

deficient study EPA does no additional harm to the subjects of the research, and EPA's refusal to rely on such data could do nothing to benefit the subjects of the research. Moreover, they assert that while the Agency cannot undo what has already happened, EPA can clearly express its disapproval of past unethical conduct. They note that to replicate scientifically sound but ethically flawed human studies may not be ethical, no matter how carefully such replicate research might be conducted, since any increment of risk to potential subjects would not be justified by anticipated new generalizable knowledge. Holders of this view also stress the importance of strengthening protections for volunteers who participate in future studies, while taking advantage of all that can be learned from past research to benefit society.

EPA finds compelling many of the points made by both sides, and agrees with those who say that the possibility of conducting and using human studies in regulatory decision-making must be approached with the utmost caution. Each side bases its arguments on important societal values. Our mission is to make the best possible regulatory decisions to protect public health and the environment in this country, and to support similar efforts around the world. We do not want to ignore potentially important information that might benefit our decision-making. At the same time, we agree that our conduct should encourage high ethical standards in research with human subjects and strongly discourage unethical research.

Many participants in the public debate over whether EPA should rely on scientifically sound and relevant but ethically flawed data have tended to frame possible policy choices in ways that discount or ignore the values and goals of those with whom they disagree. But the Agency must find a way to reconcile multiple goals.

- EPA believes it must fulfill its mandate to do the best possible job of protecting public health. We think our decisions are generally better if they reflect consideration of all available, scientifically valid, and relevant knowledge.

- EPA believes its goal is to ensure, to the extent possible, that all people who participate as subjects of human research are treated ethically, are fully informed of the potential risks, and experience no harm from their participation. We hope--through our rules, policies, procedures, and regulatory actions--to discourage or prevent the conduct of human studies that do not meet rigorous ethical and

scientific standards. (A scientifically inadequate human study is inherently unethical, because it fails to provide new information reliable enough to justify subjecting volunteers to any risks by participating in the study.)

- EPA believes the federal government should use all of its authorities to make clear that certain kinds of human research can never be acceptable. In particular, we regard as unethical and would never conduct, support, require, or approve any study involving intentional exposure of pregnant women, infants, or children to a pesticide.

#### *C. EPA Consultation with the National Academy of Sciences*

The conduct and consideration of data from human research inevitably raises difficult, contentious issues, and EPA has sought counsel from others in trying to resolve these issues. We have asked for expert advice from our Agency scientific peer review groups, and we have sought public comments through multiple **Federal Register** Notices (see Unit III.). The most extensive advice has come from the National Academy of Sciences (NAS) who, at the Agency's request, prepared a report entitled "Intentional Human Dosing Studies for EPA Regulatory Purposes," issued in February 2004 (NAS Report).

The NAS developed its report after long and thoughtful consideration of the full range of issues. Their recommendations addressed whether or not EPA should rely on the results of ethically deficient human studies, and what standards should guide the conduct of future human research. The NAS Report concluded that the answers to these questions should start from the existing standards for the ethical treatment of human research embodied in federal regulations known officially as the "Federal Policy for the Protection of Human Subjects of Research" but generally referred to as the "Common Rule." The NAS Report then offered numerous recommendations, supported by detailed rationales, for how to apply the principles of the Common Rule to the particular issues confronting EPA. The NAS Report discusses the full range of types of human studies available to EPA and the full breadth of statutory programs under which they might be considered.

The Common Rule has been promulgated in regulations by 15 federal departments and agencies, including EPA. In addition, the Central Intelligence Agency must comply with all subparts of 45 CFR part 46 under Executive Order 12333. The Common Rule establishes a comprehensive

framework for the review and conduct of proposed human research to ensure that it will be performed ethically. The central requirements of the Common Rule are: (1) That people who participate as subjects in covered research are selected equitably and give their fully informed, fully voluntary written consent; and (2) that proposed research be reviewed by an independent oversight group referred to as an Institutional Review Board (IRB), and approved only if risks to subjects have been minimized and are reasonable in relation to anticipated benefits, if any, to the subjects, and the importance of the knowledge that may reasonably be expected to result.

#### *D. Summary Scope of this Proposal*

The Agency recognizes that issues arise about human testing of all classes of environmental substances, not only pesticides, and under all its legal authorities, and not only the pesticide laws. This proposal, however, focuses on the most pressing of issues: defining appropriate ethical standards for investigator conduct and for Agency use of third-party intentional dosing human studies for pesticides.

The Agency acknowledges that a final rule along the lines being proposed would not address, much less resolve, all the issues in the current debate about human research. But the Agency views this proposal as an essential and urgently needed first step in what could be a series of Agency actions to address a wider range of human research under other statutory authorities. Although we believe a stepwise approach will put stronger protections in place sooner, EPA is open to considering an expanded scope for this proposed rule to address either a broader range of human research designs or decision-making under other statutory authorities. Accordingly, in later units of this preamble the Agency has identified alternatives to each aspect of this proposal. Note that there are many ways in which the different elements of the proposed rule and the identified alternatives could be combined; we encourage commenters to consider and address how the whole of the rule should fit together, in addition to the merits of specific alternatives. Public comment will play an important part in our choices for the scope and terms of the final rule.

### **III. Introduction**

#### *A. Ethical Standards for Conducting Human Research*

Over the years, scientific research with human subjects has provided

valuable information to help characterize and control risks to public health, but its use has also raised particular ethical concerns for the welfare of the human participants in such research as well as scientific issues related to the role of such research in assessing risks. Society has responded to these concerns by defining general standards for conducting human research.

In the United States, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research issued in 1979 The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research. This document can be found in the docket for this proposed rule and on the web at <http://www.hhs.gov/ohrp/humansubjects/guidance/belmont.htm>. For many U. S. federal departments and agencies, the principles of the Belmont Report are implemented through the Federal Policy for the Protection of Human Subjects (the Common Rule). The Common Rule, promulgated by 15 federal departments and agencies, including the EPA, on June 18, 1991 (56 FR 28003), applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency that has adopted the Common Rule and has taken appropriate administrative action to make it applicable to such research. The Common Rule as promulgated by EPA (40 CFR part 26) has applied to human subjects research conducted or supported by EPA since it was put into place in 1991.

The World Medical Association, a voluntary federation of national medical associations, has developed and maintains ethical standards documented in the Declaration of Helsinki, first issued in 1964 and revised several times since then. The latest version of the Declaration is available at: <http://www.wma.net/e/policy/b3.htm>. These standards apply internationally to research on the diagnosis and treatment of human disease, or that adds to understanding of the causes and development of disease.

In addition, many public and private research and academic institutions and private companies, both in the United States and in other countries, including non-federal U.S. and non-U.S. government organizations, have their own specific policies related to the protection of human participants in research.

Much of the scientific information supporting EPA's risk assessments is generated by researchers who are not part of or supported by a federal agency.

This includes a significant portion of the research with human subjects submitted to the Agency or retrieved by the Agency from published sources. Such research, referred to here as "third-party" research, may be governed by specific institutional policies intended to protect research participants, may fall within the scope of the Declaration of Helsinki, or might actually be covered by the Common Rule if the particular testing institution holds an assurance approved by the Department of Health and Human Services' (HHS) Office for Human Research Protections (OHRP). (Under a "federal-wide assurance" issued by OHRP, a research institution may voluntarily promise to apply the Common Rule to all its research with human subjects, without regard to the source(s) of funding or other support). Some research reports provide insufficient information to support a judgment whether institutional policies are consistent with or as protective of human subjects as the Common Rule, or even to tell whether such policies or standards were followed. Thus, even scientifically well-conducted third-party human studies may raise difficult questions for the Agency when it seeks to determine their acceptability for consideration.

#### *B. Human Research Issues in EPA's Pesticide Program*

Although data from human studies have contributed to assessments and decisions in most EPA programs, issues about consideration of and reliance on third-party human research studies have arisen most frequently, but not exclusively, with respect to pesticides. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136-136y), EPA requires pesticide companies to conduct studies needed to evaluate the safety of their products. While some studies involving human subjects are required, EPA has never required intentional dosing human toxicity studies with pesticides. EPA has, however, required studies to measure potential exposure to pesticides of users or of workers and others who re-enter areas legally treated with pesticides. Other required tests have evaluated the effectiveness of pesticide products intended to repel insects and other pests from human skin. In addition, EPA has required studies to define pesticide metabolism and metabolic products in humans, as a guide to interpretation of biomonitoring studies of agricultural workers and others to protect them from exposure to potentially dangerous levels of pesticide residues.

The public controversy over human testing and pesticides has centered on studies involving intentional dosing of human subjects with a pesticide to identify or measure its toxic effects. Although the Agency has never required or encouraged anyone to perform such tests, pesticide companies have sometimes chosen to conduct them and submit them to the Agency. For some two decades before passage of the Food Quality Protection Act (FQPA) in 1996, such studies were rare, but when they were submitted EPA considered them, and factored relevant information into its human health risk assessments. After passage of FQPA, submission of this kind of study to the Office of Pesticide Programs increased; the Agency has received some twenty studies of this kind since 1996.

Submission of these studies following FQPA elicited a strong expression of public concern. In response, EPA convened an advisory committee under the joint auspices of the EPA Science Advisory Board (SAB) and the FIFRA Scientific Advisory Panel (SAP) to address issues of the scientific and ethical acceptability of such research. This advisory committee, known as the Data from Testing of Human Subjects Subcommittee (DTHSS), met in December 1998 and November 1999, and completed its report in September 2000. Their report is available in the docket for this proposed rulemaking, and on the web at: <http://www.epa.gov/science1/pdf/ec0017.pdf>.

The DTHSS advisory committee heard many comments at their two public meetings, and further comments have been submitted in response to their published report. The committee agreed unanimously on several broad principles, including the following:

- Any policy adopted should reflect the highest standards, and special concern for the interests of vulnerable populations.
  - The threshold of justification for intentional exposure of human subjects to toxic substances should be very high.
  - The justification cannot be to facilitate commercial interests, but only to safeguard public health.
  - Not only the nature and magnitude of risks and benefits but their distribution must be considered in assessing research protocols.
  - Bad science is always unethical.
- Yet no clear consensus emerged from the advisory committee on many other points, among them both the scientific merit and the ethical acceptability of studies to identify or measure toxic effects of pesticides in human subjects. A vigorous public debate continued about the extent to which EPA should

accept, consider, or rely on third-party intentional dosing human studies for pesticides.

Some public commenters have asserted that the DTHSS committee did, in fact, achieve consensus. Although the full committee agreed on some subjects, the members filed both majority and minority reports differing on one of the most important issues under discussion—whether it is ever ethical to conduct or for EPA to consider a study sponsored by a pesticide company in which human subjects were intentionally dosed with a pesticide to evaluate its toxicity. The disagreement within the committee was vehement. After nearly 18 months of discussion, two members filed a minority report and resigned from the committee to protest the position taken by the committee majority.

In December 2001, EPA asked the advice of the NAS on the many difficult scientific and ethical issues raised in this debate, and also announced the Agency's interim approach to third-party intentional dosing human toxicity studies. The Agency's announcement is in the docket for this proposed rulemaking. The announcement promised that when it received the NAS report, "EPA will engage in an open and participatory process involving federal partners, interested parties and the public during its policy development and/or rule making regarding future acceptance, consideration or regulatory reliance on such human studies." In addition, the press release also stated that while the Academy was considering these issues, EPA "will not consider or rely on any such human studies in its regulatory decision-making."

In early 2002, various parties from the pesticide industry petitioned the U. S. Court of Appeals for the D. C. Circuit for review of EPA's December 2001 press release. These parties argued that the interim approach announced in the Agency's December 2001 Press Release constituted a "rule" promulgated in violation of the procedural requirements of the Administrative Procedure Act and the Federal Food, Drug, and Cosmetic Act. On June 3, 2003, the Court found for the petitioners and vacated EPA's interim approach, stating:

For the reasons enumerated previously, we vacate the directive articulated in EPA's December 14, 2001 Press Release for a failure to engage in the requisite notice and comment rulemaking. The consequence is that the agency's previous practice of considering third-party human studies on a case-by-case basis, applying statutory requirements, the Common Rule, and high ethical standards as a guide, is reinstated and remains in effect unless and until it is

replaced by a lawfully promulgated regulation. See *CropLife America v. Environmental Protection Agency*, 329 F.3d 876, 884 - 85 (D.C. Cir. 2003) (referred to as the *CropLife America* case).

At EPA's request, the NAS convened a committee to provide the requested advice. The committee met publicly in December 2002, and again in January and March 2003. The membership, meeting schedule, and other information about the work of this committee can be found on the NAS website at: <http://www4.nas.edu/webcr.nsf/5c50571a75df494485256a95007a091e/9303f725c15902f685256c44005d8931?OpenDocument>. The committee issued its final report, "Intentional Human Dosing Studies for EPA Regulatory Purposes: Scientific and Ethical Issues," in February 2004. Their report is available at: <http://www.nap.edu/books/0309091721/html/>.

On May 7, 2003, EPA issued an advance notice of proposed rulemaking (ANPR) on Human Testing announcing its intention to undertake notice-and-comment rulemaking on the subject of its consideration of or reliance on research involving human participants (68 FR 24410) (FRL-7302-8). The ANPR invited public comment on a broad range of issues, and EPA received over 600 submissions in response. Approximately 15 were from pesticide companies, pesticide users, and associated trade associations and groups. These comments mostly favored the Agency's use of data from scientifically sound, ethically appropriate studies conducted with human participants. Several of these groups urged EPA to apply the Common Rule to human research conducted by third parties for submission to EPA. About 60 submissions came from religious groups, farm-workers' and children's advocacy groups, and environmental and public health advocacy organizations. Most of these groups generally opposed on ethical grounds EPA's consideration of results from human testing, especially those involving intentional dosing of test participants with pesticides. Some of these commenters suggested, however, that, under certain strict conditions, EPA might appropriately consider data from human studies that complied with the Common Rule. Over 500 private citizens submitted identical comments opposing the use of data from human studies with pesticides in EPA's regulatory decision-making. A sizeable number of other private citizens expressed dismay in their comments at what they misunderstood to be an EPA

proposal to test pesticides on human subjects.

### C. EPA's Announcement of its Plan and Process

After consideration of the Court of Appeals' decision in the *CropLife America* case, the public comments on the ANPR, and the NAS report, EPA set out to address the issues involving the conduct and reliance on human research. On February 8, 2005, EPA published and invited public comment on a **Federal Register** Notice announcing EPA's plan to establish a comprehensive framework for deciding whether to consider or rely on certain types of research with human participants (70 FR 6661) (FRL-7695-4). Among other actions called for in this plan were issuing proposed and final rules and supplemental guidance, and expanding the functions and staff of EPA's Human Subjects Research Review Office (HSRRO) and relocating those functions to the Office of the Administrator.

The February 8, 2005, **Federal Register** Notice also described the Agency's case-by-case process for evaluating human studies, which the D.C. Circuit required to remain in effect until superseded by rulemaking. (EPA's application of this process with respect to third party intentional dosing human toxicity studies for pesticides was suspended by the EPA 2006 Appropriations Act discussed in Unit XI.) As the Notice explained:

As mandated by the D.C. Circuit in the *CropLife America* case, EPA has resumed consideration of third-party human studies on a case-by-case basis, applying statutory requirements, the Common Rule, and high ethical standards as a guide. In its consideration and review of human studies submitted to the Agency, EPA will continue to generally accept scientifically valid studies unless there is clear evidence that the conduct of those studies was fundamentally unethical (e.g., the studies were intended to seriously harm participants or failed to obtain informed consent), or was significantly deficient relative to the ethical standards prevailing at the time the study was conducted.

In response to the February 8, 2005, **Federal Register** Notice, EPA received approximately 150 comments opposing pesticide research with human subjects. In addition, other comments urged adoption of new standards and specific safeguards for vulnerable populations; argued that intentional dosing of humans to determine toxic effects is inherently unethical; encouraged EPA to reinstate its previous moratorium on such tests; suggested that intentional human dosing studies are superior to animal studies in indicating the actual

toxic effects of a compound in humans, and that human testing is acceptable if subjects are adequately informed and provided with medical monitoring; expressed concern that the small number of subjects in many human studies may not yield statistically significant results relevant to various subpopulations; urged that third-party researchers be required to submit protocols for review; stated that human subjects testing should not be conducted just to provide a no-observed-effect-level (NOEL) for a single endpoint and that the studies should be conducted so as to maximize the amount of data collected; asserted that the Common Rule should be the minimum standard for studies submitted to EPA and that researchers should also comply with the Nuremberg Code, Belmont Report, and Declaration of Helsinki; and argued that dosing humans with pesticides to determine a NOEL or no-observed-adverse-effect-level (NOAEL) is always unethical.

EPA has reviewed each of the comments submitted in response to the May 7, 2003, ANPR and the February 8, 2005, Proposed Plan and Description of Review Process. These comments have provided useful input as the Agency has developed this proposal. EPA also expects to receive many useful and informative comments in response to this proposal. When a final rule is published, EPA will respond to the comments received in response to all three of these documents.

#### D. Legal Authority

The proposed rule described in this document is authorized under provisions of the following statutes that EPA administers. Section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes the Administrator to “prescribe regulations to carry out the purposes of [FIFRA].” Section 408(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA) authorizes the Administrator to issue a regulation establishing “general procedures and requirements to implement [Section 408].” In addition, the proposed amendments to EPA’s codification of the Common Rule regarding first- and second-party research are authorized pursuant to 5 U.S.C. 301 and 42 U.S.C. 300v-1(b).

On August 2, 2005, the President signed into law the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Public Law No. 109–54 (Appropriations Act), which provides appropriated funds for the Environmental Protection Agency and other federal departments and agencies. Unit XI. of this preamble

discusses how this proposal meets the requirements of section 201 of the Appropriations Act, which addresses EPA activities regarding intentional dosing human toxicity studies for pesticides as follows:

None of the funds made available by this Act may be used by the Administrator of EPA to accept, consider or rely on third-party intentional dosing human toxicity studies for pesticides, or to conduct intentional dosing human toxicity studies for pesticides until the Administrator issues a final rulemaking on this subject. The Administrator shall allow for a period of not less than 90 days for public comment on the Agency’s proposed rule before issuing a final rule. Such rule shall not permit the use of pregnant women, infants or children as subjects; shall be consistent with the principles proposed in the 2004 report of the National Academy of Sciences on intentional human dosing and the principles of the Nuremberg Code with respect to human experimentation; and shall establish an independent Human Subjects Review Board. The final rule shall be issued no later than 180 days after enactment of this Act.

#### IV. Extending the Common Rule to Future Third-Party Human Research

This unit concerns rulemaking to extend the requirements of EPA’s Common Rule, 40 CFR part 26, to certain types of human research conducted or supported after the effective date of the rule by regulated third parties.

##### Summary of the EPA Proposal

EPA proposes to extend the requirements of EPA’s Common Rule (40 CFR 26.101 through 26.124) to third-party research, conducted after the effective date of the rule, which involves intentional exposure of human subjects, if the researcher intended to submit the resulting information to EPA, or to hold the information for later inspection by EPA, under FIFRA or the FFDCA.

##### A. Background

The Common Rule applies to “all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make [the Common Rule] applicable to such research.” See 40 CFR 26.101(a). The Common Rule defines “research” as:

a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

See 40 CFR 26.102(d).

EPA has promulgated the Common Rule, making it applicable to human research that the Agency conducts or supports. The requirements of EPA’s codification of the Common Rule currently do not, however, apply to third-party human research intended for submission to or considered by EPA, except when the research is conducted under an applicable assurance of Common Rule compliance approved by OHRP and that has been voluntarily extended to cover third-party research.

Currently no federal agency has taken administrative action to extend the requirements of the Common Rule to third-party human research. In 1980 and 1981, however, the Food and Drug Administration (FDA) promulgated separate regulations that required parties conducting covered human research to comply with provisions regarding Institutional Review Board (IRB) review and informed consent. See *Protection of Human Subjects; Informed Consent*, 46 FR 8942 (January 27, 1981) and *Protection of Human Subjects; Standards for Institutional Review Boards for Clinical Investigations*, 46 FR 8958 (January 27, 1981). These regulations have since been amended several times to make them substantively equivalent to the Common Rule.

The FDA rules apply to certain testing by third parties, specifically to:

all clinical investigations regulated by the Food and Drug Administration under sections 505(i) and 520(g) of the Federal Food, Drug, and Cosmetic Act, as well as clinical investigations that support applications for research or marketing permits for products regulated by the Food and Drug Administration, including foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, drugs for human use, medical devices for human use, and electronic products. See 21 CFR 50.1.

The FDA regulation defines “clinical investigation” to mean:

... any experiment that involves a test article and one or more human subjects and that either is subject to requirements for prior submission to the Food and Drug Administration under section 505(i) or 520(g) of the act, or is not subject to requirements for prior submission to the Food and Drug Administration under these sections of the act, but the results of which are intended to be submitted later to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The term does not include experiments that are subject to the provisions of Part 58 of this chapter, regarding nonclinical laboratory studies. See 21 CFR 50.3(c).

FDA regulations further define “nonclinical laboratory study” as a laboratory-based experiment not involving humans. See 21 CFR 58.3(d).

The NAS committee did not directly address extending the requirements of the Common Rule to third-party human research; however, the committee did discuss the Common Rule at length, using it as the starting point for its analyses of ethical issues arising from consideration of the results of intentional human dosing studies for EPA regulatory purposes. See, e.g., NAS Report, chapter 2 and chapters 4-6. The NAS also recommended a number of steps to EPA to strengthen protections for human subjects involved in intentional dosing studies. See NAS Report, chapters 4 and 5. While it seems evident the NAS committee would support extending the requirements of the Common Rule beyond first and second parties, the committee did not declare a position on the scope of third-party human research which should be covered by such an extension.

The NAS committee’s most direct statements appear in connection with their Recommendation 6-1:

EPA should require that *all* human research conducted for regulatory purposes be approved in advance by an appropriately constituted IRB or an acceptable foreign equivalent.

(Italics in the original.) In explaining this recommendation, the NAS suggested “EPA may wish to use FDA’s implementation of its equivalent of the Common Rule (21 CFR Part 50) as a guide for its adoption of such a requirement.” NAS Report, p. 133.

EPA interprets the NAS phrase “research conducted for regulatory purposes” in this context to mean research intended to be submitted to EPA for consideration in connection with any regulatory actions that may be performed by EPA. (The NAS did not limit this or other recommendations to human research received under specific EPA statutory authorities.) The Agency

interprets the NAS recommendation for prior IRB approval of all such research to be equivalent to a recommendation that the Common Rule should be extended to it. The NAS recommendations do not specifically address application of the Common Rule requirements for informed consent, but they do characterize non-consensual research as fundamentally unethical. With these interpretations, adoption and implementation of the NAS recommendations would put EPA in a position very similar to that of FDA.

#### *B. Proposal*

EPA proposes to extend the requirements of EPA’s Common Rule (40 CFR 26.101 through 26.124) to third-party research conducted after the effective date of the rule, which involves intentional exposure of human subjects, if the researcher intended to submit the resulting information to EPA, or to hold the information for later inspection by EPA, under FIFRA or the FFDCA.

Extension of the Common Rule is supported by a significant number of public comments which favored applying equivalent ethical standards to both EPA and third-party research. EPA agrees, and for this reason is proposing no changes to the substantive content of the Common Rule.

EPA has also given a great deal of thought to the scope of the proposed extension of the Common Rule. In the May 7, 2003, ANPR the Agency identified many factors that could possibly be used to define the range of future third-party research to which the requirements of the Common Rule might be extended. Among these factors are the nature or purpose of the substance tested, the design of the research, and the affiliation or purpose of the investigators.

EPA proposes to extend its codification of the Common Rule to third-party research intended for submission to EPA under the pesticide

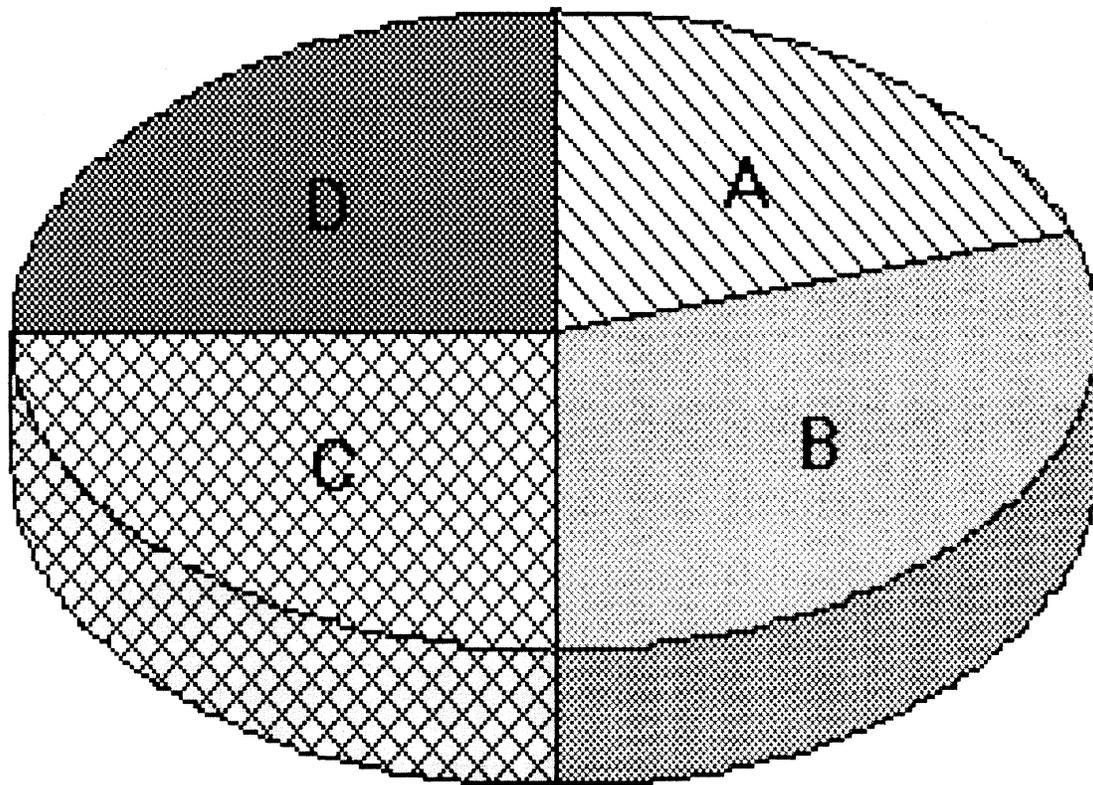
laws, and involving intentional dosing for any purpose. The figure below illustrates how these factors are related. The entire circle represents the universe of third-party human studies conducted for pesticides after the effective date of the rule. Segment A represents toxicity studies i.e., studies involving intentional dosing to identify or measure a toxic effect which are intended to be submitted to EPA under the pesticide laws, FIFRA or FFDCA. Segment B represents all other human studies intended for submission to EPA under the pesticide laws which involve intentional dosing, but for purposes other than identifying or measuring toxic effects. Examples in this category would include studies of Absorption, Distribution, Metabolism, and Excretion (ADME), insect repellent efficacy studies, and some non-occupational exposure studies. Segment C represents other studies intended for submission to EPA under the pesticide laws which do not involve intentional dosing. Examples in this category would include most occupational exposure studies, and studies involving use of registered pesticides for approved uses according to label directions.

Segments A, B, and C taken together represent all human studies intended for submission to EPA under the pesticide laws. Segment D represents all other pesticide studies, defined only by their not being intended for submission to EPA. Examples in this category would include studies conducted for publication, or to meet regulatory requirements in countries other than the U.S., or by state governments for their own use.

Segments A and B taken together represent all intentional dosing human studies intended for submission to EPA under the pesticide laws. This is the scope of extension of EPA’s Common Rule proposed in § 26.102(j) of the regulatory text.

**BILLING CODE 6560-50-S**

# Post-Rule Third-Party Human Studies for Pesticides Intentional Dosing, Toxicity, & Intent to Submit



## BILLING CODE 6560-50-C

This scope for extending EPA's Common Rule was selected as a priority in order to address public concern. Intentional dosing human studies with pesticides have generated the greatest level of public concern, and although the Agency's previous **Federal Register** Notices in May 2003 and February 2005, have broadly addressed human studies under all EPA statutes, stakeholder comments have overwhelmingly focused on human research with pesticides. The Agency intends, however, to continue to explore the feasibility of extending EPA's Common Rule to third-party studies used to inform decisions under statutory authorities other than FIFRA or the FFDCA, and is open to the possibility of applying EPA's Common Rule to a different range of pesticide research.

Three key elements define the range of research which would fall within the scope of this proposed rule. First is when the research is conducted. The proposed rule would apply EPA's Common Rule to covered research initiated after the effective date of the

final rule. Such a provision would allow researchers to come into compliance with the new requirements in an orderly manner.

The second element is research involving intentional dosing or exposure of a human subject. Proposed § 26.102(k) of the regulatory text defines "research involving intentional exposure of a human subject" as "a study of an environmental substance in which the exposure to the substance experienced by a human subject participating in the study would not have occurred but for the human subject's participation in the study." Human studies that do not involve intentional exposure are limited by the terms of this proposed definition to those where the exposure of the subjects would have occurred even if the subjects had not been participating in research. For example, under this definition a study would not be considered to involve intentional exposure if it monitored agricultural workers (such as professional fruit thinners or harvesters or other workers) who perform their usual work in areas

that have been treated with pesticides at rates and using methods registered and approved by EPA. While they are participating in the research these workers' urine and blood may be collected for analysis to evaluate biological responses, or they may wear patches attached to their clothing that are collected at the end of the shift for analysis to measure exposure.

Studies which do not involve intentional exposure such as passive observation or ambient monitoring studies do not alter the level of exposure of a subject to an environmental substance, and in fact any exposure is not a consequence of the subject's participation in the research, but results from the subject's pursuit of normal work or life activities. Thus extending EPA's Common Rule only to third-party research involving intentional exposure focuses on the cases where heightened oversight is potentially most important.

Although pesticide studies which do not involve intentional exposure would not be covered by this proposed extension of EPA's Common Rule, FIFRA section 12(a)(2)(P) would apply

because a pesticide is involved. This provision of FIFRA makes it unlawful for any person "to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical or mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test." This essential protection of the integrity and safety of the subjects does not depend on application of the Common Rule to the research.

The third element in the proposed extension of EPA's Common Rule is the intent of the investigator to submit the research to EPA under the pesticide laws. The proposed rule would apply only to research that was intended, when it was initiated, to be submitted to EPA, or to be held for EPA's later inspection, under FIFRA or FFDC. The intent to submit under the pesticide laws both defines the scope of the extension to pesticides and their ingredients, and meets the requirement of the Common Rule that covered research be "otherwise subject to regulation." Research not intended for submission to EPA may not meet this standard.

The proposal at § 26.101(k) of the regulatory text also specifies the following approach to determining the intention of research sponsors or investigators to submit the results of the research to EPA:

For purposes of determining a person's intent under paragraph (j) of this section, EPA may consider any available information relevant to determining the intent of a person who conducts or supports research with human subjects after the effective date of the rule. EPA shall rebuttably presume such intent existed if:

(1) The person or the person's agent has submitted or made available for inspection the results of such research to EPA; or

(2) The person is a member of a class of people who, or whose products or activities, are regulated by EPA under its statutory authorities and, at the time the research was initiated, the results of the research would be relevant to EPA's exercise of that statutory authority with respect to that class of people, products or activities.

This would provide a straightforward basis for both researchers and the Agency to determine before research is initiated whether the requirements of EPA's Common Rule apply to it.

EPA considered extending its codification of the Common Rule to all human research which the Agency obtains and uses in its decision-making, without regard to the intent of the investigators or sponsors to submit it to the Agency. This approach would extend Common Rule protections to the

subjects of a wider range of research, but it would entail serious problems in implementation. Much research of relevance to EPA decision-making is conducted by people who are not regulated by the Agency and can be presumed to have no intention to submit it to the agency. This may include research done in academic institutions, much research done outside the U.S., and a substantial portion of published research. As a practical matter, EPA is unable to identify in advance what research (conducted without the intention to submit it to EPA) might someday be relevant to an EPA decision. Thus, a researcher could not readily tell before conducting the research whether it would fall within the scope of an extension of EPA's Common Rule. The researcher would only know with certainty whether EPA had decided to use the results of his or her research after it was completed, when it would be impossible to comply with the Common Rule. The commitment to comply with the Common Rule must be made before conducting the research, since it imposes procedural and other requirements on the conduct of the research. Thus, the requirement to comply with the Common Rule must also be known before the research begins. While EPA has not put this forward as its preferred approach, the Agency encourages comment and suggestions that may modify its proposed position.

#### C. Topics for Public Comment

The Agency has considered a number of alternatives to the proposed rule and invites public comment on whether EPA should adopt any combination of these alternatives for the final rule, including any potential constraints:

1. Extending the application of EPA's Common Rule to all research with human subjects intended for submission to EPA under some or all of its statutory authorities, rather than limiting it to studies intended for submission under FIFRA or FFDC.

2. Limiting the application of EPA's Common Rule to research with human subjects involving intentional exposure for the purpose of identifying or measuring a toxic effect, rather than applying it to all studies involving intentional exposure.

3. Extending the application of EPA's Common Rule to all research with human subjects, rather than limiting it to research involving intentional exposure.

4. Extending the application of EPA's Common Rule to all research with human subjects that EPA uses in its decision-making, rather than limiting it

to research intended for submission to EPA.

5. Adopting an alternative definition of intentional exposure that would limit it to research conducted in laboratories or clinics, and exposing subjects to an environmental substance at a level above the median ambient levels in the environment.

6. Adopting an approach to determining a person's intent to submit research to EPA differing from that proposed in § 26.101(k) of the regulatory text.

7. Codifying all requirements applicable to regulated third parties in a separate part of 40 CFR, so that the provisions of 40 CFR part 26 would apply only to research conducted or supported by EPA. All of the alternatives identified above assume that EPA would accept for review, in at least some circumstances, some research involving intentional exposure of a human subject to a pesticide. It should be noted, however, that some public comments received on the ANPR advocated a rule that would prohibit EPA from considering any research involving intentional dosing of a human subject with a pesticide. EPA's request for comment on an alternative reflecting that view appears in Unit X.

#### V. Submission of Protocols, and Establishment of the Human Studies Review Board

This unit discusses rulemaking to require third parties who intend to conduct covered human research to submit a protocol and other information about the proposed research to EPA for a scientific and ethical review, and to establish a Human Studies Review Board.

##### Summary of EPA Proposal

EPA proposes to require prior submission of protocols and related information for proposed third-party human research covered by the rule. This rule as proposed would apply to the same range of research to which EPA's Common Rule would be extended--i.e., all intentional dosing human studies intended for submission to EPA under the pesticide laws. EPA also proposes to establish a Human Studies Review Board to provide an additional scientific and ethical peer review for such research. Finally, the Agency proposes to require that submitted reports of covered third-party studies include detailed documentation of the ethical conduct of the studies.

##### A. Background

The Common Rule requires that the protocol and other information concerning any proposed human

research be reviewed and approved by an IRB before the research is initiated. The Common Rule further provides that although a decision by an IRB to reject a proposal cannot be overruled, requirements in addition to IRB approval may be imposed before research may proceed. 40 CFR 26.103, 26.112, and 26.124.

Since its adoption of the Common Rule, EPA has followed an internal procedure requiring prior approval by the Agency's Human Subjects Research Review Official (HSRRO) of all proposed first- and second-party research with human subjects conducted or supported by EPA, in addition to and subsequent to approval of the research proposal by the cognizant local IRB.

In addition to compliance with its rules equivalent to the Common Rule (21 CFR parts 50 and 56), FDA rules governing research with Investigational New Drugs (INDs) require FDA's prior review of protocols for certain clinical studies for INDs. See 21 CFR part 312.

The NAS committee addressed the question of prior EPA review of protocols for proposed human studies directly in their recommendation 6-2:

To ensure that intentional dosing studies conducted for EPA regulatory purposes meet the highest scientific and ethical standards, EPA should establish a Human Studies Review Board to address in an integrated way the scientific and ethical issues raised by such studies. To the extent possible, this board should review in a timely manner the protocols and the justification for *all* intentional dosing studies intended for submission to EPA, as well as study results when completed. These reviews should be conducted regardless of the sponsor or site of performance, and EPA should communicate the results of the reviews to relevant parties.

In the discussion supporting this recommendation, the NAS Committee advocated that EPA's review of protocols should precede review by local IRBs, so that each IRB, which is likely to see proposals for research with environmental substances only infrequently, would have the benefit in their deliberations of the review by the EPA board, which would see all such proposals, and would develop specialized expertise in their assessment. NAS Report, p. 135.

The NAS Committee envisioned a process of prior review of protocols analogous to that used by FDA in their review of protocols for INDs. They further recommended that the conclusions of the EPA protocol review should be advisory, rather than mandatory, that the Human Studies Review Board should be relatively small, consisting of individuals with expertise in both scientific disciplines

and bioethics, and should report directly to the Office of the Administrator of EPA. NAS Report, pp. 135-36.

The NAS Committee also considered whether submission of protocols for proposed research to EPA should be mandatory or voluntary:

The main argument for mandatory review was the importance of this review process. . . . [R]equiring review of proposed experiments in advance would lead to fewer inappropriate studies. In addition, making pre-experiment review mandatory should build public confidence that problematic experiments are being minimized and would guarantee that EPA knew of all relevant industry-sponsored experiments. [NAS Report, p. 138.]

In summary the Committee stated on p. 138:

Ultimately the committee concluded that pre-experiment review of studies intended for submission to EPA *should* be mandatory, if legally and logistically feasible.

#### B. Proposal

EPA proposes to require prior submission of protocols and related information for proposed third-party human research covered by the rule. The rule would apply to the same range of research to which EPA's Common Rule would be extended--i.e., all intentional dosing human studies intended for submission to EPA under the pesticide laws. EPA also proposes to establish a Human Studies Review Board to provide an additional scientific and ethical peer review for such research. Finally, the Agency proposes to require that submitted reports of covered third-party studies include detailed documentation of the ethical conduct of the studies.

The Agency agrees with the NAS that review of proposals by EPA and the Human Studies Review Board (HSRB) could identify scientific and ethical concerns that an IRB might not recognize. The Agency also thinks that the number of studies likely to be submitted and the resulting review burden will be consistent with timely responses to protocol submissions.

There are potential advantages to placing the EPA review of proposals either before or after the review by local IRBs. On the one hand, the NAS committee argues that if the EPA and HSRB reviews come first, it would improve the consistency and quality of the reviews and benefit the local IRBs who would be likely to see far fewer study proposals of this sort than the EPA reviewers. On the other hand, reviewing the proposals after IRB approval would be consistent with FDA's practice in reviewing clinical

trials for investigational new drugs, and with EPA's practice in overseeing its own first- and second-party research, and would give the EPA reviewers the benefit of the results of the IRB review. This sequence would also reinforce the centrality of the IRB judgment in the overall scheme of implementing the Common Rule.

Based on its experience with central review of its first- and second-party research with human subjects, EPA is concerned that if the HSRB review precedes the IRB review, many relatively routine issues of research design and documentation now handled between the IRB and investigators would add to the workload of the HSRB. Conversely, if the IRB reviews at the relevant institutions are placed first in sequence, they will continue to solve many of the general ethics and science considerations commonly encountered in study design, facilitating a more focused and efficient secondary review by the HSRB of issues peculiar to covered studies. The HSRB could share accumulated insights about the issues surrounding intentional dosing studies with environmental substances through guidance to IRBs to inform their future consideration of covered studies.

Based on this reasoning, EPA proposes to require submission of protocols for review by EPA staff and the HSRB after approval of the proposal by the local IRB(s). EPA welcomes comment on this issue.

The proposal also specifies the range of information to be provided with submitted protocols, and with the results of the research. This list of topics is derived from the Common Rule criteria for IRB approval of proposed research at 40 CFR 26.111. This information will have been gathered for presentation to the IRB, and it should not be any additional burden to provide the same range of information to the Agency.

As recommended by the NAS, EPA proposes to establish a Human Studies Review Board (Board) to address in an integrated way the scientific and ethical issues raised by such studies. Specifically, the Agency proposes to convene a small group of appropriately qualified experts and to enlist their support in reviewing covered research proposals, i.e., third-party research involving intentional exposure of human subjects, when the results of such research are intended to be submitted to EPA under the pesticide laws. After completing its initial staff assessment of a research proposal, the Agency would send its review, the proposal, and supporting materials to the Board for further review and

comment. As recommended by the NAS, EPA intends to reexamine the functions of the Human Studies Review Board after 5 years.

### C. Topics for Public Comment

The Agency has considered alternatives to the proposed rule and invites public comment on whether EPA should adopt any of these alternatives for the final rule:

1. To what extent should EPA define by rule the range of functions of the HSRB, its procedures, or how it should be constituted? What should its functions be? How should it operate? Should it be formed under the Federal Advisory Committee Act (FACA), or some other authority? How best could its independence and integrity be protected from improper influence?
2. Should review of protocols for proposed research by EPA and the HSRB precede (as recommended by the NAS) or follow (as proposed) review by the local IRB?
3. Should submission of protocols for EPA and HSRB review before conduct of the research be made entirely voluntary?
4. How much time should be allowed for review by EPA and HSRB of submitted protocols? Should the rule establish a deadline for EPA's response and define the consequence of missing such a deadline?
5. Should more or less information be required about proposed research than is specified in the proposed rule? For example, should EPA specify elements of the protocol that must be contained in the description of the "research proposal"? Might the rule exempt from submission certain types of correspondence between an investigator and an IRB, such as correspondence concerning financial arrangements?
6. Should more or less documentation of the ethical conduct of the research be required than is specified in the proposed rule, when the results of the research are submitted to the Agency? For example, might the rule require additional information comparing the demographic characteristics of the study subjects to the demographics of the larger population from which the prospective participants were recruited? Or might the rule exempt from submission with the report of completed research documentation previously provided during the protocol review?
7. Should the scope of the requirement to submit proposed protocols be identical to the scope of third-party research covered by the extension of EPA's Common Rule, as that might be expanded under some of the alternatives listed for public comment in Unit IV.? For example, if

the scope of subpart A were expanded to cover all human research intended for submission to EPA, should protocol submission be required for the same range of research, or might protocol submission be limited to human research involving intentional exposure?

8. Should EPA establish, by rule, criteria identifying types of protocols (e.g., skin irritation studies on products intended for use involving long-term contact with human skin such as commercial detergents and some consumer products) that may not warrant review by the Human Studies Review Board and, if so, what should those criteria be?

### VI. Additional Protections for Children

This unit concerns rulemaking to establish additional protections, beyond the Common Rule, for children who may be subjects in research.

#### Summary of EPA Proposal

EPA proposes to categorically prohibit third parties engaged in research covered by the proposed extension of EPA's Common Rule from conducting any study involving intentional dosing of children, and to apply the same prohibition to human research that EPA conducts or supports. EPA further proposes to prohibit its own reliance in its decision-making under the pesticide laws on any research involving intentional dosing of children. Finally, as recommended by NAS, EPA proposes to adopt formally additional protections for children as subjects of other than intentional dosing research--protections it has long applied in practice in research which it conducts or supports.

#### A. Background

EPA has never conducted or supported intentional dosing studies with children, but EPA has both conducted and sponsored observational studies in which some of the subjects were children. None of these studies have involved intentional dosing. They were observational studies that did not alter the children's exposure to substances routinely experienced in their community. Many of these studies have collected data on children's activity patterns (e.g., time spent indoors, outdoors, sleeping, playing). Other research involving children has measured their levels of exposure to environmental substances in their daily lives--for example, monitoring pesticide levels in the urine of children whose parents work on farms where pesticides are used. Whenever the Agency conducts or supports scientific studies involving children, EPA not only follows the requirements of its Common

Rule but also, as a matter of practice, applies the additional protections established by HHS for research with children.

While it has not been common in recent years for third parties to perform research on environmental substances with children, it should be noted that EPA has received data from several previously conducted third-party studies involving children. Most of these studies were conducted in the last century, well before the Common Rule was adopted. EPA cannot, of course, predict how many studies involving children that third parties may conduct in the future, but based on recent experience, the Agency thinks it likely there will be very few, if any.

As part of its discussion of issues related to the selection of research subjects, the NAS report specifically addressed whether and when children could ethically be allowed to participate in human research. Among other things, the NAS concluded that children, as potential subjects in human research, raise special concerns. Not only do children--particularly younger children--have less capacity to understand the potential consequences from participation in a human study, but they are also quite vulnerable to influence by adults. Both factors make compliance with the principle of voluntary, informed consent more difficult.

While the NAS Report did not directly address whether it would ever be ethical to conduct a study intentionally exposing children to substances to determine their toxicity, we think the NAS did not believe such testing could ever be justified. In 2004, when the NAS released the report and panelists answered reporters' questions, the panelists explained that they could not envision any situation in which an investigator or the head of an agency could satisfy the ethical standards for testing a pesticide on children to determine whether (or at what level) it caused adverse effects. See [http://www.nap.edu/webcast/webcast\\_detail.php?webcast\\_id=264](http://www.nap.edu/webcast/webcast_detail.php?webcast_id=264).

HHS has addressed these issues in a regulation promulgated in 1983. *Additional Protections for Children Involved as Subjects in Research*, 48 FR 9814 (March 8, 1983). This regulation, codified at 45 CFR part 46, subpart D (§§ 46.401 through 46.409), applies only to research involving children as subjects which is conducted or supported by HHS or conducted by third parties under a Federal-wide Assurance (FWA) approved by OHRP. The HHS regulation greatly restricts the enrollment of children in research involving greater than minimal risk.

In 1997, the Education Department adopted similar rules to govern research involving children as subjects that it conducts or supports. See *Additional ED Protections for Children Who Are Subjects in Research*, 62 FR 63221 (November 26, 1997), codified at 34 CFR part 97, subpart D, §§ 97.401 through 97.409. In 2001, the Food and Drug Administration promulgated an interim final rule, codified at 21 CFR 50.51 through 50.56, establishing additional protections for children participating in certain clinical investigations conducted by third parties. *Additional Safeguards for Children in Clinical Investigations of FDA-Regulated Products*, 66 FR 20589 (April 24, 2001). Although the FDA and HHS rules are essentially equivalent in content, the FDA rule applies only to research conducted by regulated third parties.

In its Recommendation 5-2 the NAS Committee recommended:

EPA should adopt Subpart D of the Regulations for the Protection of Human Research Subjects. At a minimum, EPA should adhere to Subpart D's requirements for research involving children.

#### B. Proposal

EPA proposes to categorically prohibit third parties engaged in research covered by the proposed extension of EPA's Common Rule from conducting any study involving intentional dosing of children, and to apply the same prohibition to human research that EPA conducts or supports. EPA further proposes to prohibit its own reliance in its decision-making under the pesticide laws on any research involving intentional dosing of children. Finally, as recommended by NAS, EPA proposes to adopt formally additional protections for children as subjects of other than intentional dosing research--protections it has long applied in practice in research which it conducts or supports.

EPA is proposing to adopt and incorporate into a new subpart D of 40 CFR part 26 the essential content of subpart D of the HHS rule, 45 CFR part 46, with certain changes. EPA has made minor editorial changes to the adopted language necessary to reflect that the proposed rule would apply to third parties as well as to EPA, and would be implemented by EPA. Substantive changes are limited to: (1) Making the rule applicable to the same kinds of third-party research that would be covered by the extension of EPA's Common Rule by proposed § 26.101(j), (2) defining "children" as persons under the age of 18, and (3) creating placeholders for (but not adopting) the provisions in 45 CFR 46.406, 46.407 and 46.409 by reserving 40 CFR 26.406,

26.407, and 26.409. EPA does not consider these provisions applicable to research with environmental substances.

EPA opposes research involving intentional exposure of children, and believes that prohibiting such research represents sound public policy. With this in mind, EPA has chosen not to propose rule text comparable to the HHS rules at 45 CFR 46.406 or 46.407, and has identified those sections in the proposed EPA rule as "Reserved." 45 CFR 46.409 has been reserved in the proposed EPA rule as well, since it concerns only research approved under 45 CFR 46.406 or 46.407.

EPA also proposes to add at the end of subpart D rules which would: (1) Prohibit both EPA and third parties covered by proposed § 26.101(j) from conducting or supporting an intentional dosing study involving children, and (2) prohibit EPA itself from relying in its decision-making under the pesticide laws on any research involving intentional dosing of children with pesticides.

EPA proposes to change the definition of "children" from the HHS standard to define a finite upper age limit of 18. The HHS definition in 45 CFR 46.402(a) defers to local standards:

Children are persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.

EPA notes that 18 is the age of majority in the U.S. for essentially all purposes except the purchase of alcohol. At 18 one can enlist in the military or vote. Minor wards of the courts are discharged as adults at age 18. Eighteen is also typically the minimum age for participation in human research as an adult subject. Public comment is invited on whether a finite upper age limit is needed in the definition of "children," and if so, whether it should be 18 or a different age.

#### C. Topics for Public Comment

The Agency has considered a number of alternatives to the proposed rule and invites public comment on whether EPA should adopt any of these alternatives for the final rule:

1. Should the proposed subpart D regulations apply to broader or narrower categories of third-party research identified in Unit IV. of this preamble, possibly covering all research intended for submission to EPA involving intentional exposure of human subjects to any class of environmental substance; or covering all research being considered by EPA, etc.?

2. Should the scope of the ban on conducting new intentional dosing research involving children as subjects, proposed at § 26.240 of the regulatory text, be made broader or narrower?

3. Should the scope of the ban on EPA's reliance in its decision-making on intentional dosing research involving children as subjects, proposed at § 26.421 of the regulatory text, be made broader or narrower?

4. Should "children" be defined as persons under the age of 21, or some other finite age than the age of 18 as proposed? Or should EPA adopt unchanged the definition of "children" in the HHS regulation at 45 CFR 46.402(a)?

5. Should EPA adopt the sections of the HHS subpart D regulation it has proposed to reserve, including 45 CFR 46.406, addressing "research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition"; 45 CFR 46.407, addressing "research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children"; and 45 CFR 46.409, addressing inclusion of wards in research approved under 45 CFR 46.406 or 46.407?

6. Under what circumstances, if any, should EPA be permitted to rely in its decision-making under the pesticide laws on research involving intentional dosing of children?

#### VII. Additional Protections for Pregnant Women, Fetuses, and Certain Newborns

This unit concerns rulemaking to establish additional protections, beyond the Common Rule, for pregnant women, fetuses, and newborns who may be subjects in research.

##### Summary of EPA Proposal

EPA proposes to categorically prohibit third parties engaged in research covered by the proposed extension of EPA's Common Rule from conducting any study involving intentional dosing of pregnant women, fetuses, or newborns, and to apply the same prohibition to human research that EPA conducts or supports. EPA further proposes to prohibit itself from relying in its decision-making under the pesticide laws on research involving intentional dosing of pregnant women, fetuses, or newborns. Finally EPA proposes to adopt formally additional protections for pregnant women, fetuses, and newborns as subjects of other than intentional dosing research--protections it has long applied in

practice in research which it conducts or supports.

#### A. Background

EPA has never conducted or supported intentional dosing studies with pregnant women, but over the years, EPA has both conducted and sponsored observational studies in which some of the subjects were pregnant women. They were observational studies which did not involve any intentional exposure, and participation in them as subjects did not alter the exposure of the pregnant women to substances routinely experienced in their daily lives. For example, EPA, through the STAR (Science to Achieve Results) grant program, has awarded grants for both urban and rural studies on pregnant women and children in partnership with the National Institutes of Health as part of the Centers for Children's Environmental Research and Disease Prevention. These research centers are multi-disciplinary and foster community participation in multiple aspects of the research process. The results are directly relevant to the development of estimates of pesticide exposure for pregnant women, fetuses, and very young children; to assessment of genetic susceptibility to pesticide poisoning; and to application of proposed EPA guidelines for cumulative risk assessment of mixed exposures to multiple pesticides. These are the first investigations of the potential health consequences of pesticide exposures to young children to include in-depth assessments of children's physical and neuro-behavioral development and respiratory health. This research also characterizes pesticide and allergen levels in the home environment, resident density, and child safety, and tests the effectiveness of interventions aimed at reducing pesticide exposures.

It has not been common for third parties to perform research with environmental substances involving pregnant women, fetuses, or newborns. EPA is unaware of any such studies with any pesticide or other environmental substance.

As an essential precondition for approving any proposed research with human subjects, the Common Rule requires that IRBs find that subject selection is equitable. At 40 CFR 26.111(a)(3) EPA's codification of the Common Rule explains:

In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable

populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

HHS has taken further steps to provide additional protections specific to pregnant women, fetuses, and newborns as subjects of research. In a regulation initially promulgated on August 8, 1975 (40 FR 33526) and revised several times since, codified as 45 CFR part 46, subpart B (45 CFR 46.201 through 46.207), HHS defines stringent constraints on research with these particularly vulnerable populations. The HHS subpart B does not rule out research with these groups when it would involve direct benefit to them, but it requires an especially high standard of justification and imposes many procedural and other constraints on research which would not confer a direct benefit on the subjects. The HHS subpart B regulation applies only to research conducted or supported by HHS (or conducted under an applicable assurance of compliance approved by OHRP and voluntarily extended to cover other research). The FDA has neither proposed nor promulgated a version of the HHS subpart B that would apply to research conducted by third parties regulated by FDA.

The NAS Report did not expressly address the topic of additional protections for research involving pregnant women, fetuses, and newborns. It did, however, discuss several general considerations affecting the equitable selection of research subjects. Citing the Belmont Report's principle of justice and the general requirement in the Common Rule that "selection of subjects is equitable," the NAS identified a range of considerations:

the study population needs to be representative of the target population of interest in order for the research results to be applicable (p. 114);

the selection of research participants should be inclusive in order to avoid the exploitation and appearance of exploitation of any particular social group (p. 114);

some persons may be vulnerable to coercion or undue influence and hence may need additional safeguards (p.115); and some individuals are potentially more vulnerable to harm in research protocols and therefore . . . investigators may need to take steps to minimize risks, such as excluding those who would face higher risks (p.115).

Based on these general considerations, in its Recommendation 5-2 the NAS recommended in part:

IRBs reviewing intentional human exposure studies should ensure that the following conditions are met in selecting research participants:

a. Selection should be equitable.

b. Selection of persons from vulnerable populations must be convincingly justified in the protocol, which also must justify the measures taken to protect those participants.

c. Selection of individuals with conditions that put them at increased risk for adverse effects in such studies must be convincingly justified in the protocol, which must justify the measures that investigators will use to decrease the risks to those participants to an acceptable level.

While the NAS Report did not directly address whether it would ever be ethical to conduct a study intentionally exposing pregnant women or fetuses to substances to determine their toxicity, we think the NAS did not believe such testing could ever be justified. In 2004, when the NAS released the report and panelists answered reporters' questions, the panelists explained that they could not envision any situation in which an investigator or the head of an agency could satisfy the ethical standards for testing a pesticide on pregnant women to determine whether (or at what level) it caused adverse effects. See [http://www.nap.edu/webcast/webcast\\_detail.php?webcast\\_id=264](http://www.nap.edu/webcast/webcast_detail.php?webcast_id=264).

#### B. Proposal

EPA proposes to categorically prohibit third parties engaged in research covered by the proposed extension of EPA's Common Rule from conducting any study involving intentional dosing of pregnant women, fetuses, or newborns, and to apply the same prohibition to human research that EPA conducts or supports. EPA further proposes to prohibit itself from relying in its decision-making under the pesticide laws on research involving intentional dosing of pregnant women, fetuses, or newborns. Finally EPA proposes to adopt formally additional protections for pregnant women, fetuses, and newborns as subjects of other than intentional dosing research—protections it has long applied in practice in research which it conducts or supports.

EPA is proposing to adopt and incorporate into a new subpart B of 40 CFR part 26 the essential content of subpart B of the HHS rule, 45 CFR part 46, with only a few changes. EPA has made minor editorial changes to the language adopted necessary to reflect that the proposed rule would apply to third parties as well as to EPA, and would be implemented by EPA. Substantive changes are limited to: (1) Making the rule applicable to the same kinds of third-party research that would be covered by the proposed amendments to EPA's subpart A; and (2) creating a placeholder for (but not

adopting) the provisions in 45 CFR 46.207 by reserving 40 CFR 26.207, which EPA considers not to be appropriate for research with environmental substances.

EPA intends that the standards contained in proposed §§ 26.204 and 26.205 of the regulatory text would preclude any research with pregnant women, fetuses, or neonates who would not benefit directly from the research. EPA further believes that no pregnant woman, fetus, or neonate could possibly benefit directly from a study involving their intentional exposure to a pesticide, and thus believes such research could never be approved under the provisions of the proposed rule.

EPA opposes research involving intentional exposures to pregnant women, fetuses, or newborns, and believes this to be sound public policy. So as to eliminate even a theoretical possibility such research could be approved, we have chosen not to propose adopting 45 CFR 46.207, which provides a procedure for approving in exceptional cases research which does not meet the standards of 45 CFR 46.204 or 46.205.

EPA is also proposing at § 26.220 of the regulatory text to prohibit both EPA and third parties covered by proposed § 26.101(j) from conducting or supporting an intentional dosing study involving as subjects pregnant women, fetuses, or newborns. Finally, EPA is proposing at § 26.221 of the regulatory text to prohibit itself from relying in its decision-making under the pesticide laws on research involving intentional dosing of pregnant women, fetuses, or newborns.

### C. Topics for Public Comment

The Agency has considered a number of alternatives to the proposed rule and invites public comment on whether EPA should adopt any alternatives for the final rule.

1. Should the proposed subpart B regulations apply to any of the broader or narrower categories of third-party research identified in Unit IV. of this preamble, possibly covering all research intended for submission to EPA involving intentional exposure of human subjects to any class of environmental substance; or covering all research being considered by EPA, etc.?

2. Should the scope of the ban on conducting new intentional dosing research involving pregnant women, fetuses, or newborns as subjects, proposed at § 26.220 of the regulatory text, be made broader or narrower?

3. Should the scope of the ban on EPA's reliance in its decision-making on intentional dosing research involving

pregnant women, fetuses, or newborns as subjects, proposed at § 26.221 of the regulatory text, be made broader or narrower?

4. Should EPA adopt the section of the HHS subpart B regulation it has proposed to reserve, 45 CFR 46.207, addressing "research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates"?

5. Under what circumstances, if any, should EPA be permitted to rely in its decision-making under the pesticide laws on research involving intentional dosing of pregnant women, fetuses, or newborns?

### VIII. Additional Protections for Prisoners

This unit explains EPA's decision to defer at this time proposal of rules providing additional protection for prisoners, comparable to those adopted by HHS and codified at 45 CFR part 46, subpart C.

#### A. EPA Rationale for Deferral

EPA has decided to defer adoption of the HHS subpart C rules at this time for a number of reasons. First, many people in the ethics community have concluded that these rules create as many problems as they solve, providing inadequate protections for prisoners, discouraging research on issues affecting prisoners, and sometimes putting subjects of ongoing research at avoidable risk when they become prisoners. HHS and its advisory committee, the Secretary's Advisory Committee on Human Research Protections (SACHRP), are actively considering revisions to the HHS subpart C, which has not been changed since its adoption in 1978. EPA is monitoring the work of this committee with interest, and will reconsider adopting additional protections for prisoners as subjects of research when its recommendations are known.

In addition, EPA has never conducted or supported any human studies with prisoner subjects, and has no intention to do so in the future. Some third-party research with prisoner subjects was submitted to the Agency some 30 or more years ago; since HHS adopted subpart C, this type of research has essentially disappeared, and none has been submitted to EPA for many years. We do not expect any to be submitted to us in the future.

Finally, if either EPA or third parties should consider performing studies with prisoner subjects, the prisoners' participation would still be governed by

the provisions in EPA's Common Rule requiring additional protections (40 CFR 26.111(a)(3) and 26.111(b)) and special care in informed consent (40 CFR 26.116) when dealing with populations vulnerable to coercion or undue influence.

#### B. Topics for Public Comment

The Agency has considered a number of alternatives to the position described and invites public comment on whether EPA should adopt any of these alternatives for the final rule:

1. Should EPA adopt an appropriately revised version of the HHS subpart C regulation for application to research conducted or supported by EPA or third parties, possibly including any of the types of research or categories of third parties discussed in Unit IV.?

2. Should EPA include in its final regulation an express prohibition on any research involving intentional dosing of prisoners with pesticides?

### IX. Potential Consequences for Failure to Comply With the Requirements of the Common Rule Within the Scope of Today's Proposed Rule

#### Summary of EPA Proposal

To encourage compliance with the requirements of subparts A through D of this action, EPA proposes, as circumstances warrant, to: (1) Refuse to rely on the results of any research that does not comply with these requirements; (2) seek withdrawal or suspension of a research institution's Federal-wide Assurance; (3) disqualify a research institution or its IRB; (4) debar an entity from receiving federal funds for research; or (5) present for public review an objective analysis of the ethical deficiencies of any human research relied upon by EPA for regulatory decision-making under any statutory authority. These provisions in proposed §§ 26.501 through 26.504 and § 26.506 of the regulatory text closely follow FDA's existing regulations in 21 CFR 56.120 through 56.124.

#### A. Background

There are a number of options available to agencies seeking to penalize first- or second-party researchers that fail to comply with applicable provisions of the Common Rule. (See the NAS Report, pp. 60-61). Funding or sponsoring agencies may: (1) Terminate or suspend the offending research; (2) suspend funding for the research; (3) require written responses regarding alleged deficiencies, or enactment of specific changes to research protocols to address the problems; (4) seek withdrawal of the OHRP-issued Federal-wide Assurance necessary to conduct

the research; or (5) disqualify an IRB. With respect to third-party human research that is not conducted or sponsored by a federal agency, some or all of these options may be inapplicable.

A potential consequence for the conduct of research by a third-party that fails to comply with Common Rule requirements that EPA has, by rule, made applicable is for the Agency to refuse to rely on the data in regulatory decision-making. The NAS Report (p. 125) specifically recommends that EPA "not use data from ethically problematic studies to inform its regulatory efforts." Recommendation 5-6 of the NAS (p. 127, italics in original) provides that EPA should operate on the strong presumption that data obtained in studies conducted *after* implementation of the new rules that do not meet the ethical standards described in this report will not be considered in its regulatory decisions. Similarly, a number of commenters have suggested that EPA should not accept, consider, or rely upon any human subjects studies that are ethically deficient. The NAS avers (p. 125) that the question of addressing human subjects studies that are non-compliant with ethical standards "will rarely arise, especially after EPA formulates its standards and procedures." EPA hopes such a situation will never arise. Nonetheless, it is incumbent upon the Agency to address the potential consequences should such non-compliance occur.

EPA is proposing to extend the requirements of its codification of the Common Rule to third party intentional exposure studies intended to be submitted under FIFRA or FFDCA. The Agency proposes to apply the measures described in proposed subpart E of the regulatory text to this research; the Agency would not apply any of these measures to research falling outside this scope. In considering the issue of the appropriate potential consequences for failure to comply with the requirements set forth in this proposed rule for such studies submitted under FIFRA or FFDCA, the Agency notes that FIFRA speaks specifically to ethical considerations for human subjects research involving pesticides. FIFRA section 12(a)(2)(P) expressly declares it unlawful for any person "to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test [and] of any physical and mental consequences which are reasonably foreseeable therefrom and (ii) freely volunteer to participate in the test." Violations of FIFRA section 12(a)(2)(P) are subject to civil and criminal penalties under section 14 of

FIFRA. Given that FIFRA expressly requires that human subjects studies using pesticides include specific protections for the human subjects in such studies, we believe that, where these requirements have been violated, EPA is authorized to refuse to rely on the data and other information resulting from such studies. The Agency believes that, as a matter of policy, it would be appropriate to decline, at least in some circumstances, to use in regulatory decision-making under FIFRA the results of research that is unlawful under FIFRA. Refusal to rely on data from completed human studies which do not comply with applicable requirements of this part is discussed further in Unit X.

Thus, while EPA is proposing in some cases to refuse to rely on data generated from ethically deficient human studies, we note that refusal to rely on it is not the only possible response to the discovery of ethical deficiencies in human research. The NAS Report identifies a number of measures that HHS and FDA currently use to encourage compliance. With respect to third-party research, possible responses include declaring a particular entity ineligible to receive future federal support to conduct human research; suspending or withdrawing a "Federal-wide Assurance" (FWA) held by a research institution or the approval of the IRB; disqualifying an IRB; and addressing the ethical deficiencies of the research in a public notice (which, however, would not necessarily preclude consideration of the data in regulatory decision-making).

The first two options described are among the most powerful measures available to HHS for addressing problematic conduct under the Common Rule. The Office for Human Research Protection (OHRP) of HHS issues FWAs to institutions that commit to follow the Common Rule for all federally funded human research performed at the institution, and institutions may voluntarily commit to follow the Common Rule in all their research, without regard to sources of funding or other support. An FWA permits an institution to receive EPA contracts and grants to perform human research. If OHRP determines that an institution is not complying with the Common Rule, it may withdraw or suspend approval of the FWA, thereby preventing the institution from conducting any federally supported human research until HHS deems it deserves to have the FWA reinstated. FDA also exercises a similar authority directed at IRBs or institutions which fail to fulfill their responsibilities under the FDA rules

governing third-party human research. Currently, EPA relies on OHRP's established mechanisms when EPA deems it necessary to seek withdrawal of a FWA.

In more egregious cases EPA might disqualify specific investigators or institutions from eligibility to receive federal contracts or grants through a process called "debarment." Debarment proceedings follow a common procedure throughout the Federal government, and debarment by one federal agency would effect a government-wide ban on that entity's receiving federal support for research.

Finally, we are aware of no barriers to the Agency's publishing an objective analysis of ethical conduct of any human research that it may rely on in its regulatory decision-making. A candid public discussion of any ethical shortcomings of such research accompanied by a discussion of its scientific strengths, limitations, and findings, and of the regulatory context of the Agency's decision can communicate both why it was deemed necessary to consider the research, and the distaste associated with relying on ethically deficient research. Full public discussion of the ethical shortcomings of human research can contribute a strong disincentive to repetition of such ethically deficient conduct by the investigator and others.

### *B. Proposal*

To encourage compliance with the requirements of subparts A through D of the regulatory text, EPA proposes, as circumstances warrant, to: (1) Refuse to rely on the results of any research that does not comply with these requirements; (2) seek withdrawal or suspension of a research institution's FWA; (3) disqualify a research institution or its IRB; (4) debar an entity from receiving federal funds for research; or (5) present for public review an objective analysis of the ethical deficiencies of any human research relied upon by EPA for regulatory decision-making under any statutory authority. These provisions in proposed §§ 26.501 through 26.504 and § 26.506 of the regulatory text closely follow FDA's existing regulations in 21 CFR 56.120 through 56.124.

### *C. Topics for Public Comment*

The Agency has considered a number of alternatives to the proposed rule and invites public comment on whether EPA should adopt any alternatives for the final rule.

1. Are any additional measures available to enforce third-party

compliance with applicable provisions of proposed subparts A, B, and D?

2. Should EPA define by rule criteria for determining the most appropriate consequences for those who conduct or sponsor ethically deficient human subjects. If so, what should those criteria be?

3. If the scope of the extension of EPA's Common Rule were broader or narrower than proposed in § 26.101(j) of the regulatory text, would the same or a different range of potential consequences for failure to comply with Common Rule requirements apply?

4. FDA has published at 21 CFR part 16 regulations establishing procedures for deciding whether to disqualify an IRB or institution that has failed to comply with applicable requirements. Should EPA pursue rulemaking to establish procedural regulations similar to those of FDA?

#### **X. Ethical Standards for Determining Whether to Rely on Scientifically Sound, Completed Human Studies with Ethical Deficiencies**

This unit concerns rulemaking to establish ethical standards EPA would apply in deciding whether to rely on the results from a scientifically sound completed human study deemed relevant to an EPA action. Other parts of today's proposal address conduct of both EPA and certain third parties in the roles of investigators or sponsors of research with human subjects. It is in the capacity of investigators that both EPA and covered third parties are prohibited by this proposal from conducting or sponsoring intentional dosing studies involving pregnant women, infants, or children as subjects of the research.

By contrast, this part of the rulemaking would govern EPA's conduct as a regulatory agency, as it makes decisions to consider or not to consider reports of completed research with human subjects in its scientific assessments, and to rely on or not to rely on such research in its regulatory decisions. The Agency recognizes that the possibility of EPA refusal to rely on the results of research that does not meet appropriate ethical standards may influence the behavior of third parties. The Agency hopes that such a prospect would, along with other factors, be enough to encourage sponsors and investigators to conform to high ethical standards when performing covered human research.

##### *Summary of EPA Proposal*

In a new subpart F of 40 CFR part 26, EPA proposes ethical standards for its decisions to rely on or not to rely on in its decision-making reports of

completed intentional-dosing research with human subjects being considered under FIFRA or FFDC. For covered types of research conducted *after* the effective date of the rule, EPA proposes to refuse to rely on data from scientifically sound and relevant human research unless EPA has adequate information demonstrating that the research complied with the Common Rule. For covered types of research conducted *before* the effective date of the rule, EPA proposes to rely on data from scientifically sound and relevant human research unless there is clear evidence to show the conduct of the research was fundamentally unethical or was significantly deficient relative to the ethical standards prevailing at the time the research was conducted. EPA also proposes a formal process to make an exception to these standards when to rely on scientifically sound but ethically deficient research would give crucial support to a regulatory action more protective of public health than could be justified without relying on the ethically deficient research.

##### *A. Background*

The NAS Report specifically addressed the issue of what role, if any, ethically deficient or unethical studies should play in EPA's regulatory decisions. The NAS predicted that the problem would rarely arise, especially once EPA formulated its standards and established them through rulemaking or other means. Nonetheless, the NAS acknowledged that, when it arises, the decision is "ethically vexing" (p. 125) because "two important goals come into conflict: first, using the best scientific data to protect the public and, second, avoiding incentives for the conduct of unethical research involving humans and undermining important ethical principles" (p. 126). The NAS recognized that different considerations could affect how this decision is made, depending primarily on when the ethically problematic research was performed in relation to EPA's articulation of its standards. Accordingly, the NAS recommended two standards for acceptance, applying respectively to research conducted after EPA establishes new standards, and to research conducted before EPA establishes new standards.

For research conducted after EPA establishes new standards i.e., after these proposed rules are promulgated in final form, the NAS expected there to be relatively few deficiencies. The NAS assumed that EPA and the HSRB would review both scientific and ethical aspects of proposed human research before it is conducted. To the extent

EPA identified ethical issues, the NAS further assumed the Agency would inform the researcher who, in turn, would make appropriate changes. In its recommendation 5-6 NAS advised EPA as follows:

EPA should operate on the strong presumption that data obtained in studies conducted *after* implementation of the new rules\* that do not meet the ethical standards described in this report will not be considered in its regulatory decisions. Under exceptional circumstances, studies that fail to meet these ethical standards may provide valid information to support a regulatory standard that would provide greater protection for public health. Under these circumstances, EPA should convene a special, outside panel, consisting of relevant experts and members of the public, to examine the cases for and against considering data from such studies. [\*Note: a footnote here in the text of NAS Recommendation 5-6 reads: "The committee uses the term "rules" informally to mean guidance, guidelines, policy, protocols, rules, or regulations."]

In explaining this recommendation, the NAS discussed and rejected the position favoring a categorical refusal to rely on the results of any ethically deficient study. The NAS began by noting that it is critically important to deter unethical conduct in human research. The NAS pointed out that many believe the refusal to rely on data from ethically deficient studies has an additional purpose: to avoid involving the government in "a kind of symbolic approval of and complicity in the unethical research, even after the fact, [and instead] to express society's commitment to fundamental values in research involving humans" (p. 127). The NAS pointed out that this position leads to an absolute renunciation of any benefits of knowledge gained through the ethically deficient research, and that in some instances that might compel a sacrifice in public health.

Thus, the committee recommended that each case be judged individually, to take into account the nature of the unethical behavior and the importance of the information produced by the research. The NAS indicated that EPA should use data from an unethical study only if a special panel determined the data were "crucially important for protecting public health" and could not otherwise be obtained with reasonable certainty, within a reasonable time period, without exposing additional subjects to additional risk of harm (pp. 126, 128). The committee further advised that data from unethical studies should not be used to justify relaxation of public health standards or to "favor the sponsor's interest" (p. 128). Finally, the committee indicated its view that

using the special procedure described in the recommendation would not create “an incentive for future breaches of the relevant ethical rules” (p. 126).

The NAS Report also addressed what standard to apply in judging studies completed before EPA’s rulemaking becomes effective. (The committee explained that this standard should also apply “to studies that EPA has retrieved from the public literature” (pp. 129–30), but did not say whether they intended this standard to apply only to studies retrieved from the public literature that were conducted after new EPA rules become effective.) The committee begins by pointing out that the selection of a standard for determining the acceptability of past research raises additional considerations, making the choice “particularly vexing” (p. 128). They noted in particular two issues: “whether it is fair to judge past studies with humans by current ethical standards” (p. 128), and what evidentiary presumptions should be used in applying the standard. Although the NAS did not devote much discussion to whether to apply contemporary standards to past studies, their recommendation 5-7 states clearly their conclusion that completed research should be judged by the ethical standards prevailing at the time the research was conducted.

The NAS discussed at length alternative evidentiary presumptions which could be used in applying the ethical standard, identifying two broad choices. The first alternative would be to assume completed research was conducted ethically unless clear evidence shows it was unethical; the second would be to assume completed research was conducted unethically unless clear evidence shows it was ethical. The committee noted that documentation of the ethical attributes of a very large proportion of past human studies is very limited, not only for third-party research but also for government-conducted and government-supported research. Applying the second alternative would mean, effectively, that a substantial proportion of completed human research would be rejected as unethical, solely because records were unavailable to demonstrate that it was ethically conducted.

The NAS recommended instead that, in the absence of information to the contrary, EPA should assume completed research was performed ethically. They favored this approach “because of ethical concerns about not considering scientifically valid data from completed studies” and because setting aside much or most completed research could lead investigators “to conduct additional

research to obtain similar data to protect the public, thus subjecting additional research participants to risk” (p. 129).

Based on this discussion, NAS Recommendation 5-7 reads:

EPA should accept scientifically valid studies conducted before its new rules\* are implemented unless there is clear and convincing evidence that the conduct of those studies was fundamentally unethical (e.g., the studies were intended to seriously harm participants or failed to obtain informed consent) or that the conduct was deficient relative to then-prevailing ethical standards. Exceptional cases in which the Human Studies Review Board determines that unethically conducted studies may provide valid information to support a regulatory standard that would provide greater protection for public health should be presented to a special outside panel, described in Recommendation 5-6, for consideration. [\* Note: a footnote here in the text of NAS Recommendation 5-7 reads: “See footnote 1.” The text of the NAS-referenced footnote 1 is provided above in the note for Recommendation 5-6.]

#### B. Proposal

In a new subpart F of 40 CFR part 26, EPA proposes ethical standards for its decisions to rely on or not to rely on in its decision-making reports of completed intentional-dosing research with human subjects being considered under FIFRA or FFDCA. For covered types of research conducted *after* the effective date of the rule, EPA proposes to refuse to rely on data from scientifically sound and relevant human research unless EPA has adequate information demonstrating that the research complied with the Common Rule. For covered types of research conducted *before* the effective date of the rule, EPA proposes to rely on data from scientifically sound and relevant human research unless there is clear evidence to show the conduct of the research was fundamentally unethical or was significantly deficient relative to the ethical standards prevailing at the time the research was conducted. EPA also proposes a formal process to make an exception to these standards when to rely on scientifically sound but ethically deficient research would give crucial support to a regulatory action more protective of public health than could be justified without relying on the ethically deficient research.

The provisions of EPA’s proposed subpart F address intentional exposure studies being considered under FIFRA or the FFDCA. The NAS discussion of Recommendations 5-6 and 5-7 did not distinguish between human studies involving intentional dosing and other types of human research, although their report addressed “intentional human dosing studies.” EPA has chosen to

limit its proposal in subpart F to intentional dosing human studies considered under FIFRA or FFDCA, because the public debate about relying on data from human research has focused primarily on that kind of testing. EPA expects to continue to evaluate the ethical conduct of other types of human research outside the scope of proposed subpart F on a case-by-case basis, guided by statutory requirements, the Common Rule, and high ethical standards, consistent with the approach described in its February 8, 2005, **Federal Register** Notice.

For human studies initiated before a final rule becomes effective, we agree with the NAS committee that it is appropriate to measure the conduct of human studies against the ethical standards prevailing when the research was conducted. The history of the development and revision of widely accepted standards of ethical research conduct such as the Nuremberg Code, the Declaration of Helsinki, the Belmont Report, and the Common Rule is well known. Although it is not always easy to determine what standards prevailed *where* the research was conducted, this history is adequate to identify an appropriate standard based on *when* the research was conducted. This approach acknowledges that ethical standards have changed over time, and will surely change in the future. It would also be inequitable to apply contemporary ethical standards retroactively to research conducted in the past. Before the effective date of the rule, sponsors or investigators would have had no notice of the specific standard EPA would apply to their data. Moreover, they can be assumed to have regarded the ethical standards prevailing at the time the study was conducted as the most appropriate benchmark for guiding their conduct. While the proposed rule would, strictly speaking, only govern EPA’s behavior, it provides the basis for judgment of others’ past conduct. It seems inherently unfair to hold researchers to a standard about which they had no notice and which, after the fact, they would be unable to comply with through any further action. But it does seem reasonable and fair to judge their behavior against the standards of which they should have been aware. We believe this is the essence of NAS Recommendation 5-7.

The Agency has refined the language of the standard in NAS Recommendation 5-7 in two ways. EPA has retained the evidentiary presumption recommended by the NAS committee, but has modified their suggested requirement for “clear and convincing evidence” to “clear

evidence.” The Agency simply cannot imagine “clear but unconvincing” evidence that research was fundamentally unethical, and has opted for brevity. EPA has further modified the recommended standard to specify that the Agency will consider refusing to rely on a past study when it is “significantly deficient” compared to prevailing ethical standards. This is intended to acknowledge that minor recordkeeping or administrative deficiencies with respect to the prevailing ethical standard should not in themselves force the Agency to set aside an otherwise ethically conducted and scientifically meritorious study.

For judging the ethical acceptability of covered human studies initiated after a final rule becomes effective, EPA proposes the Common Rule as the primary standard. In general terms, the approach to human research covered under the extension of EPA’s Common Rule would seem very straightforward. Once EPA completes rulemaking to extend to certain third-party research the requirements of EPA’s Common Rule and these proposed additional subparts, it seems entirely appropriate to expect all research within the scope of these subparts and conducted after they take effect to comply with the rule. If the Agency were to become aware of covered research that does not comply, EPA should consider the measures in proposed subpart E of the regulatory text and discussed in Unit IX., including whether it would be appropriate to refuse to rely on the data. We believe this is the essence of NAS Recommendation 5-6.

EPA is not, of course, proposing to establish FIFRA section 12(a)(2)(P) as a standard. FIFRA section 12(a)(2)(P) was enacted in 1972 and implementing regulations were promulgated in 1980. Thus FIFRA section 12(a)(2)(P) already applies to human subjects research with pesticides, and no additional rulemaking is necessary to make it applicable.

EPA also agrees with the NAS Recommendation 5-6 that the researcher should bear the burden of demonstrating compliance with the standard. Proposed § 26.602 of the regulatory text provides that the Agency would accept data from a study covered by the rule “only if EPA has adequate information to determine that the research was conducted in a manner that substantially complies with subpart A and, as applicable, subparts B and D of this part.” EPA has listed in proposed § 26.124(c) of the regulatory text the kinds of information documenting the ethical conduct of completed human research that EPA would expect to see

in a submitted report of such research. (Note that this documentation would be additional to records required by 40 CFR 169.2(j), implementing FIFRA section 12(a)(2)(P) recordkeeping requirements.) This range of documentation is derived from the Common Rule criteria for IRB approval of proposed research at 40 CFR 26.111. It will thus have been gathered for presentation to the IRB and for submission to EPA with the proposed protocol for the research, and it should not be a burden to provide the same information to the Agency with the report on the completed study.

Today’s proposal slightly modifies the standard in NAS recommendation 5-6 to make it clear that EPA would consider refusing to rely on a completed human study only if the study fails to “substantially” comply with the applicable ethical standards. This addition reflects EPA’s judgment that relatively minor administrative or recordkeeping deficiencies in a researcher’s compliance with a rule as complex as the Common Rule would not in themselves justify rejecting otherwise scientifically valuable and ethically conducted research. The experience of HHS shows that many studies conducted under the Common Rule fail to meet every applicable provision of the Common Rule, yet many of these deficiencies are deemed minor. See “Compliance Oversight in Human Subjects Protection” by Dr. Kristina C. Borrer, Director, Division of Compliance Oversight in the Office of Human Research Protections (February 1, 2005), available at: [http://www.hhs.gov/ohrp/sachrp/mtgfiles/mtg01-05/present2/borrer\\_files/frame.htm](http://www.hhs.gov/ohrp/sachrp/mtgfiles/mtg01-05/present2/borrer_files/frame.htm).

EPA’s proposed subpart F covers all intentional human dosing studies that EPA is considering under FIFRA or FFDCa. Some of these studies might *not* be covered by the proposed extension of EPA’s Common Rule. The exceptions would include any intentional exposure human studies for pesticides that were not, at the time they were conducted, intended to be submitted to EPA under FIFRA or FFDCa. Such studies might be retrieved from the public literature by EPA, conducted by U.S. States or by foreign governments, or conducted by third parties for regulatory purposes in other countries. For studies like these, covered by proposed subpart F but not by the proposed extension of EPA’s Common Rule, the question of what ethical standard to apply is more difficult.

On the one hand, since the Agency proposes not to subject this research to the extension of EPA’s Common Rule, it

could be argued that it would be inconsistent and unfair to apply the standard of the Common Rule to the Agency’s later decisions about whether to rely on that research. Sometimes the person submitting a report of research to EPA will have had no relationship with the sponsor or investigator of the research; a submitter in this situation could argue that they could be penalized for actions taken by someone else with no connection to them, who was not legally required to follow the Common Rule and who for whatever reason chose not to.

On the other hand, once EPA promulgates a final rule, researchers would have notice of the ethical standards EPA would apply in deciding whether to rely on a completed intentional dosing human study. With such notice, researchers could make an informed decision whether or not to comply with the requirements of EPA’s Common Rule. They would have adequate and timely warning about the consequences of noncompliance. Furthermore, it is EPA’s judgment that it is fair to consider the “prevailing ethical standard” for research conducted after the effective date of new rules to be the Common Rule or a foreign equivalent. These considerations argue for subjecting all research conducted after the effective date of the new rule to the more demanding ethical standards defined by that new rule. If EPA took this approach, its rules might influence the conduct of a larger universe of research and thereby provide greater protection for human subjects.

EPA proposes therefore, in deciding whether to rely on data from a completed study, to apply the Common Rule to *all* studies conducted after a final rule becomes effective and which are covered by EPA’s new subpart F, whether or not the research was required to comply with EPA’s Common Rule under EPA’s new subpart A. The primary argument against using the Common Rule as the ethical benchmark for all future intentional exposure human studies is that researchers will not have had adequate notice. EPA disagrees; publication of a final rule in the **Federal Register** will constitute adequate notice. Given the widespread awareness of and consensus on the Common Rule as the appropriate guide for ethical conduct of human research, EPA therefore expects that very few, if any, sponsors or investigators could credibly claim ignorance of their ethical responsibilities to protect human subjects. Finally, the Agency believes its use of the Common Rule as the ethical benchmark for deciding whether to rely

on a human study would provide additional incentive for researchers to act ethically.

Finally, EPA proposes an extraordinary procedure applicable if scientifically sound but ethically deficient human research is found to be crucial to EPA's fulfilling its mission to protect public health. This procedure would also apply if a scientifically sound study covered by proposed § 26.221 or § 26.421--i.e., an intentional dosing study involving pregnant women or children as subjects--were found to be crucial to the protection of public health. The Agency accepts the NAS advice to make these decisions on a case-by-case basis, taking into account the particular circumstances of the study and the way it could affect the regulatory action, and seeking the best possible advice. EPA agrees such decisions should consider the importance of the research to a potential regulatory decision, and particularly whether it would support a regulatory position more protective of public health than would be justified without reliance on the data. Proposed § 26.603 would require EPA, before deciding not to rely on such data, to seek the advice of the Human Studies Review Board and comment from the public.

### C. Topics for Public Comment

The Agency has considered a number of alternatives to the positions described and invites public comment on whether EPA should adopt any of these alternatives for the final rule:

1. Should EPA continue the case-by-case approach articulated in the February 8, 2005, **Federal Register** Notice, not adopting by rule ethical standards to guide decision-making with respect to completed, ethically problematic human studies?

2. Should a final rule establish the standard that EPA would rely on all scientifically sound data from covered intentional exposure human studies relevant to EPA decision-making, without regard to any ethical deficiencies in the studies?

3. Should a final rule establish a different criterion for acceptance of research conducted before the effective date of the rule than the criterion proposed in § 26.601 of the regulatory text? Should a final rule identify specific factors to be considered or criteria to be applied in determining whether research was "fundamentally unethical" or "significantly deficient with respect to prevailing standards"?

4. Should a final rule establish the standard that, in making decisions under FIFRA and FFDCA, EPA would never rely on data from a study

involving intentional exposure of any human subject to a pesticide when a purpose of the study was to identify or measure toxic effects?

5. Should a final rule establish the standard that EPA would not rely on an intentional exposure human study covered under proposed subpart F if the study did not comply with the Common Rule, without regard to when the research was conducted?

6. Should a final rule establish the standard in NAS Recommendation 5-7 for all three categories of completed research covered by proposed subpart F of the regulatory text--i.e., (1) Research conducted before the rule becomes effective; (2) research conducted after the rule becomes effective and required to comply with EPA's Common Rule; and (3) research conducted after the rule becomes effective but not required to comply with EPA's Common Rule?

7. Should a final rule apply a different standard to research conducted after the effective date of the final rule, depending on whether the research was subject to the requirements of EPA's proposed subparts A through D?

8. Should a final rule apply proposed subpart F to a different range of third-party human research, including any of the categories discussed in Unit IV., or apply different ethical standards to research in different categories within an altered scope?

9. Should a final rule apply a standard other than "substantial" compliance with the requirements in EPA's proposed subparts A through D, perhaps requiring "full" or "complete" compliance with those requirements? How should minor, administrative deficiencies be treated under an alternative standard?

10. Should a final rule permit use of the exception procedure in proposed § 26.603 when research falling within the prohibitions of proposed § 26.221 or § 26.421--i.e., research involving intentional exposure of pregnant women or children--is deemed crucial to the protection of public health?

11. Should a final rule identify additional factors EPA will consider in deciding whether to rely on a completed human study that does not meet the appropriate standard in proposed § 26.601 or § 26.602 of the regulatory text?

## XI. EPA's 2006 Appropriations Act

This unit discusses how this proposed rule meets the requirements of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, (Appropriations Act) relating to intentional dosing human toxicity

studies for pesticides. This unit contains six sections. Section A reviews the provisions of the 2006 Appropriations Act and summarizes EPA's approach to implementation of its provisions.

Section B addresses the proposed rule's prohibition of intentional dosing human studies for pesticides when the subjects are pregnant women, infants, or children. Section C addresses its consistency with the 2004 NAS report. Section D addresses its consistency with the Nuremberg Code. Section E addresses its establishment of an independent Human Studies Review Board. Section F identifies subjects on which EPA invites public comment.

### A. Introduction

On August 2, 2005, the President signed into law the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Public Law No. 109-54 (Appropriations Act), which provides appropriated funds for the Environmental Protection Agency and other federal departments and agencies. Section 201 of the Appropriations Act addresses EPA activities regarding intentional dosing human toxicity studies for pesticides as follows:

None of the funds made available by this Act may be used by the Administrator of the Environmental Protection Agency to accept, consider or rely on third-party intentional dosing human toxicity studies for pesticides, or to conduct intentional dosing human toxicity studies for pesticides until the Administrator issues a final rulemaking on this subject. The Administrator shall allow for a period of not less than 90 days for public comment on the Agency's proposed rule before issuing a final rule. Such rule shall not permit the use of pregnant women, infants or children as subjects; shall be consistent with the principles proposed in the 2004 report of the National Academy of Sciences on intentional human dosing and the principles of the Nuremberg Code with respect to human experimentation; and shall establish an independent Human Subjects Review Board. The final rule shall be issued no later than 180 days after enactment of this Act.

Consistent with its interpretation of the intent of Congress, EPA has not waited for the beginning of FY 2006 to discontinue reliance on third-party intentional human dosing toxicity studies in its decision-making under FIFRA and FFDCA. In addition, EPA is taking the necessary steps to ensure such studies will not be accepted or considered after the beginning of FY 2006 and before a final rule is promulgated. The Agency has not conducted or supported any intentional dosing human toxicity studies for pesticides in the past, and has no

intention to conduct them at any time in the future.

The Agency will concentrate its attention on developing and promulgating a final rule. As required by the Appropriations Act, EPA is providing a period of 90 days for the public to comment on this proposed rule. Because the Appropriations Act directs the Agency to promulgate a final rule no later than 180 days after enactment (i.e., by January 29, 2006), the Agency does not expect to extend the comment period or to review public comments received after the close of the comment period.

#### *B. Prohibition of Intentional Dosing Human Studies for Pesticides when the Subjects are Pregnant Women, Infants, or Children*

This proposed rule would ban third party intentional dosing human studies for pesticides when the subjects are pregnant women, infants or children, without regard to whether the studies were intended to identify or measure a toxic effect. Proposed § 26.220 of the regulatory text would prohibit, without exception, any third party performing research covered by the proposed extension of EPA's Common Rule from "conducting or supporting research involving intentional dosing of any pregnant woman, fetus, or newborn." Proposed § 26.420 of the regulatory text would prohibit, without exception, any third party performing research covered by the proposed extension of EPA's Common Rule from "conducting or supporting research involving intentional dosing of any child." The same passages would apply the same prohibitions to EPA, similarly without exception, in any research it conducts or supports.

The Agency interprets the phrase "third-party intentional dosing human toxicity study for pesticides" as used in the Appropriations Act to refer to a subset of all third-party intentional dosing studies intended for submission to EPA under the pesticide laws, and thus covered by proposed § 26.101(j) of the regulatory text. Further, the Agency interprets the phrase "pregnant women, infants or children" as used in the Appropriations Act to have the same scope and meaning as the phrases "any pregnant woman, fetus, or newborn" and "any child" in the sections cited above, when taken together. EPA also notes that the prohibitions in proposed §§ 26.220 and 26.420 of the regulatory text reference proposed § 26.101(j), and therefore make the prohibitions applicable to research that was conducted with the intent to submit the results to EPA (or hold them for possible

future inspection) under either of the pesticide laws, FIFRA or FFDCA. EPA interprets the phrase, "for pesticides" as used in the Appropriations Act to mean research that is intended for consideration by EPA under the pesticide laws, and thus which falls within the scope of proposed § 26.101(j). EPA invites public comment on these interpretations of the meaning of the phrase "intentional dosing human toxicity studies for pesticides" as it is used in the Appropriations Act, particularly as it relates to the scope of the requirement for a prohibition on such studies with subjects who are "pregnant women, infants, or children."

#### *C. Consistency with the 2004 NAS Report*

The Appropriations Act directs EPA to promulgate a rule addressing third party intentional dosing human toxicity studies for pesticides that is "consistent with the principles proposed in the 2004 report of the National Academy of Sciences on intentional human dosing."

Based on a careful review of the NAS report, EPA has concluded that the underlying principles intended by the NAS committee to be reflected in its recommendations are the three "fundamental ethical principles" identified by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (National Commission) in its report, *Ethical Principles and Guidelines for the Protection of Human Subjects of Research* (the "Belmont Report"). These three fundamental principles are respect for persons, beneficence, and justice. See NAS Report at pp. 49–50, 98, and 113–14.

The NAS committee makes the point clearly that they did not propose new principles: "the committee was not required to invent the basic standards that govern human research in the United States. These standards are already embodied in the Federal Policy for the Protection of Human Subjects (the Common Rule.)" NAS Report pp. 4, 33.

The NAS committee further stated that the fundamental principles articulated in the Belmont Report both undergird and are made operational by the procedural requirements of the Common Rule. The following quotations express this view:

Federal regulations incorporate the obligation of beneficence by requiring IRBs to ensure that risks are minimized to the extent possible, given the research question, and are reasonable in relation to potential benefits to the participant or to the importance of the knowledge to be gained through the research (40 CFR § 26.111(a)(1)–(2)). NAS Report at 56.

[D]etermining whether the principle of beneficence has been satisfied requires balancing the anticipated risks to study participants against the anticipated benefits of the study to society. The risks to participants must be reasonable in relation to the societal benefit. In the words of the Common Rule, the risks must be reasonable in relation to the importance of the knowledge that may reasonably be expected to result (40 CFR § 26.111 (a)(2)). NAS Report at 107.

According to the Common Rule, IRBs should not approve a research protocol involving humans unless 'selection of subjects is equitable' (40 CFR § 26.111(3)). This requirement derives from the principle of justice identified in the Belmont Report. NAS Report at 114.

Voluntary, informed consent by research participants . . . is a major element in the system of protection of research participants. The consent requirement expresses the principle of respect for persons, including respect for and promotion of autonomous choices. The Common Rule stresses this requirement, as do other codes of research ethics, including the Nuremberg Code (1949), the Declaration of Helsinki, and the Good Clinical Practice guidelines. NAS Report at 120.

Accordingly, EPA concludes that the "principles proposed in the 2004 report of the National Academy of Sciences on intentional human dosing" are, in fact, the "three fundamental principles" of respect for persons, beneficence, and justice articulated in the Belmont Report, and that the Common Rule rests on the foundation of those principles. This proposal to extend the coverage of EPA's Common Rule to additional categories of regulated third-party research is thus entirely consistent with those principles.

#### *D. Consistency with the Nuremberg Code*

The Appropriations Act directs EPA to promulgate a rule addressing third-party intentional dosing human toxicity studies for pesticides that is "consistent with . . . the principles of the Nuremberg Code with respect to human experimentation."

The NAS report (p. 47) explains the history of the Nuremberg Code as follows:

Public policies regarding the ethical treatment of humans in research began forming in the late 1940s, largely in response to the atrocities committed by Nazi investigators who were tried before the Nuremberg Military Tribunal (*United States v. Karl Brandt*, et al.) In 1946, the American Medical Association adopted its first code of research ethics, which ultimately influenced the Nuremberg Tribunal's standards for ethical research, embodied in the ten "basic principles" for human research now known as the Nuremberg Code. [footnotes and references omitted]

The Agency has carefully reviewed this proposed rule, using the 10 principles of the Nuremberg Code as a guide, and has concluded that it is consistent with them. A full report of this analysis has been placed in the docket for this proposal.

#### *E. Establishment of a Human Studies Review Board*

The Appropriations Act directs EPA to promulgate a rule that "shall establish an independent Human Subjects Review Board."

EPA believes that the entity required by the Appropriations Act is intended to be substantially identical to the "Human Studies Review Board" recommended by the NAS in Recommendations 6-1, 6-2, and 6-3 of the NAS Report. (See discussion in Unit V. of this preamble.) Consistent with both the requirement of the Appropriations Act and the recommendations of the NAS, EPA proposes, in proposed § 26.124(b) of the regulatory text, to establish an independent HSRB. Under this proposed rule, the review of proposed research by the HSRB would occur after review by a local IRB and EPA staff. This sequence would be consistent both with EPA's current practice for reviewing first- and second-party human research proposals and with the practice of FDA for reviewing third-party human research proposals. The NAS Report, however, recommended that the EPA and HSRB reviews come before the IRB review. EPA believes it has discretion to adopt an approach that differs in this respect from the NAS recommendation, but seeks public comment on whether HSRB review would be more effective before or after local IRB review.

#### *F. Additional Topics for Public Comment*

Although EPA thinks that today's proposal satisfies the provisions in the Appropriations Act and, in particular, is consistent with the principles of both the Nuremberg Code and the 2004 NAS Report, the Agency recognizes that, as a matter of policy, it might be appropriate to include in the final rule additional provisions arising from either the Nuremberg Code or the 2004 NAS Report. Therefore, in addition to the topics identified above, the Agency invites the public to comment on any specific provisions of either the Nuremberg Code or the 2004 NAS report that may be appropriate for inclusion in the final rule.

### **XII. FIFRA Review Requirements**

Pursuant to FIFRA section 25(a), the Agency submitted a draft of this

proposed regulation to the FIFRA Scientific Advisory Panel (SAP), the U.S. Department of Agriculture (USDA), the Committee on Agriculture in the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry in the United States Senate. In addition, the Agency submitted a draft of this proposed rule to the Department of Health and Human Services (HHS).

The FIFRA SAP waived its review of this proposal because the significant scientific and ethical issues involved have already been reviewed by the SAP. (See the report of the SAB/SAP Data from Testing of Human Subjects Subcommittee in the docket for this proposal and on the web at: <http://www.epa.gov/science1/pdf/ec0017.pdf>.) The Agency met with the staff of the Congressional Committees, and where warranted, has made changes to the draft proposal based upon those discussions.

USDA, the U.S. Department of Veterans Affairs, and HHS provided many helpful comments through the interagency review process, leading to numerous changes in the draft proposal. In addition, comments dated August 15, 2005, and August 26, 2005, which EPA received from Cristina V. Beato, M.D., Acting Assistant Secretary for Health at HHS, have been placed in the docket for this rulemaking, and are summarized here with EPA's responses.

EPA thanks HHS for providing very helpful comments very quickly. In summary, HHS expressed strong support for EPA's effort to extend the protections of EPA's Common Rule to research regulated by EPA under FIFRA. HHS welcomes EPA's decision to adopt additional regulatory protections of pregnant women, fetuses, newborns, and children, formalizing EPA's longstanding practice. HHS also welcomes EPA's proposal to prohibit EPA involvement in or consideration of intentional exposure studies done to investigate toxic effects.

HHS made four "major" comments. First, HHS stated that it could not support changes to the content of subpart A, the Common Rule, and recommended that EPA revise its proposal to incorporate all changes proposed to §§ 26.101, 26.102, and 26.124 in a separate subpart. EPA appreciates and shares HHS's concern for maintaining uniformity in subpart A--the regulation common to all the Common Rule departments and agencies--and promises that the final rule will accomplish the extension of EPA's Common Rule without altering the common text. We have not made the requested change in this proposal

because we want first to solicit public comment on how best to achieve clarity in our codification of these new requirements. Would the requirements applicable to regulated third parties be best expressed as HHS has suggested, in a separate subpart of 40 CFR part 26, or would it be clearer if all the requirements applying to regulated third parties were codified together in an entirely separate part, after the model of the FDA rules at 21 CFR parts 50 and 56?

Second, HHS notes in their August 15 written comment that FDA may have additional comments, but did not have time to complete them in the greatly compressed schedule imposed by the demands of the Appropriations Act. FDA's comments were received on August 26, and this proposal has been amended to reflect all their suggested clarifications and changes. The Agency would also welcome additional comments from HHS and FDA, and will address them in the final rule.

Third, HHS recommends that EPA modify its proposal to incorporate a ban on research involving intentional exposure of prisoners, parallel to the bans proposed on similar research involving pregnant women, fetuses, newborns, and children. EPA has specifically requested public comment on this suggestion in Unit VIII., and will seriously consider adopting such a ban in the final rule.

The final major HHS comment expresses concern that the ethical standard proposed in § 26.601 of the regulatory text, to be applied to research conducted before the effective date of new EPA rules, may be too permissive, and "fails to provide helpful guidance on what would separate an acceptable study from an unacceptable one." The standard EPA has proposed, as explained in Unit X., is based on the advice of the NAS committee, which thought long and hard about this issue. EPA, too, has thought a great deal about this criterion, and has identified several topics for public comment at the end of Unit X., including the specific points raised by HHS in this comment. We will consider all these comments in deciding on a standard for the final rule.

In addition to the four "major" comments discussed above, HHS provided 23 additional "specific" comments. Although some of the passages HHS cited in the draft proposal they reviewed do not appear in this published proposal, EPA has adopted all the specific suggestions for clarifications and rewording suggested by HHS. The final HHS comment, however, questions whether submission to EPA of reports of completed research

should be made mandatory when the research proposal has been reviewed and approved by EPA. EPA has not proposed this, because FIFRA section 6(a)(2) already requires any applicant for registration or registrant of a pesticide to provide to EPA any "additional factual information concerning adverse effects of a pesticide" that it becomes aware of. It is EPA's interpretation that it would be a violation of this provision for a regulated third party to refuse to submit a report upon completion of research which EPA had approved as a proposal in order to suppress "additional factual information concerning adverse effects."

### XIII. Statutory and Executive Order Reviews

#### A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) determined that this proposed rule is a "significant regulatory action" under section 3(f) of the Executive Order because this action might raise novel legal or policy issues. Accordingly, EPA submitted this proposed rulemaking to OMB for review under Executive Order 12866 and any changes made in response to OMB comments have been documented in the public docket for this rulemaking as required by section 6(a)(3)(E) of the Executive Order.

In addition, EPA has prepared an economic analysis of the potential costs and benefits associated with this proposed action, which is contained in a document entitled *Economic Analysis of Proposed Human Studies Rule*. A copy of this document is available in the public docket for this proposed rule and is briefly summarized here.

The analysis describes the benefits of the proposed rulemaking in qualitative terms. These benefits included greater protections for test subjects, and a corresponding reduction in their risks, to the extent that affected researchers are not already following the Common Rule. The benefits to sponsors of third-party human research include a better understanding of the standards that EPA will apply in determining whether to rely on the results of their studies, and thus, the opportunity to design and perform studies that are more likely to meet EPA standards, leading to more efficient Agency reviews. The Agency believes the general public will benefit from the proposed rule because the rule will strengthen the protections for human subjects and reinforce the Agency's strong commitment to base its

decisions on scientifically sound information.

The analysis also estimates the costs of the proposed rule by focusing on the costs to third parties of complying with the new requirements and the costs to EPA of implementing the new requirements. In general, EPA believes that most, if not all, third-party research intended for submission to EPA that involves intentional exposure of human subjects already complies with the Common Rule or an equivalent foreign standard. For purposes of this analysis, EPA assumed that current practice was in full compliance with the Common Rule. In contrast, EPA assumed that other types of third-party human research do not comply with the Common Rule, although it is likely that many responsible for such research are aware of and do follow Common Rule principles relating to informed consent and IRB review.

After reviewing the history of EPA's consideration of research involving human subjects in its various program offices, EPA estimates that the proposed rule would affect only a limited number of third-party studies involving human subjects each year. EPA also collected data on the cost per study of compliance with the Common Rule. These costs include preparing documents to support review by an IRB and the expense associated with the IRB review. These costs are very minor relative to the overall cost of conducting the studies. For EPA, the costs are associated with the review of protocols and the review of completed human studies by EPA staff and the Human Studies Review Board.

EPA evaluated a range of options, from no action to an expansive rule. The first option was not to promulgate any rule, thereby continuing the current practice. All other options evaluated would apply to third-party human research that was conducted with the intent to submit the results to EPA under either FIFRA or FFDCa. The second option consisted of extending the requirements of EPA's Common Rule to such third-party human research only when it involved intentional exposure studies for the purpose of identifying or quantifying a toxic effect. The third option, which reflects the rule being proposed, would extend the requirements of EPA's Common Rule to all third-party intentional exposure human studies intended for submission under FIFRA or FFDCa. Option 4 would extend the requirements of EPA's Common Rule to all third-party human research intended for submission under the pesticide laws. All of the latter three options include a requirement for third

parties to submit protocols for review prior to initiating the types of human research covered by the Common Rule. Finally, options 2-4 include a provision prohibiting the Agency and third parties from conducting covered human research with pregnant women or children as subjects.

For all of the options, the potential costs of the proposed rule to third-party researchers and EPA are estimated to be very low, both because the number of affected studies is relatively small and because the costs of compliance with the Common Rule are low. Where the option simply reflects the current practice (option 1) the added total incremental costs to third-party sponsors of human research are zero. EPA assumes that currently the pesticide industry is already spending \$159,000 to \$196,000 annually to comply with the Common Rule for intentional exposure human studies and the Agency is currently spending \$113,000 a year to review, on a case-by-case basis, the ethical aspects of such studies. Option 2 would add an estimated total annual incremental cost to third parties of \$7,532, and an estimated annual cost to EPA of \$220,894. Option 3 would add an estimated total annual incremental cost to third parties of \$16,140, and an estimated annual cost to EPA of \$327,630. Option 4 would add an estimated total annual incremental cost to third parties of \$202,700 to \$242,796, and an estimated annual cost to EPA of \$601,134. The higher estimated costs for option 4 reflect the Common Rule compliance burden on third-party researchers who perform human studies not involving intentional exposure of human subjects, and the costs for EPA to review such completed studies and protocols for intentional exposure studies.

The proposed rule, if finalized as proposed, is estimated to result in a total annual incremental cost to third parties of approximately \$16,000, and an estimated annual cost to EPA of approximately \$328,000.

#### B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2195.01, and a copy of the ICR has been placed in the public docket for this proposed rule.

This new information collection activity is planned to ensure that sound

and appropriate scientific data are available to EPA when making regulatory decisions, and to protect the interests, rights and safety of those individuals that are participants in the type of research activity that is the subject of this proposed rule. Specifically, this new information collection activity consists of proposed reporting and recordkeeping requirements. Whenever respondents intend to conduct research for submission to EPA under the pesticide laws that involves intentional dosing of human subjects, they will be required to submit study protocols to EPA and a cognizant local IRB before such research is initiated so that the scientific design and ethical standards that will be employed during the proposed study may be reviewed and approved. Respondents will also be required to submit information about the ethical conduct of completed research that involved intentional dosing of human subjects when such research is submitted to EPA.

Some responses to this collection of information will be required in order to obtain or retain a benefit (i.e., a pesticide registration). Other responses will be voluntarily submitted at the initiative of the regulated entity. The information collection activity described in the ICR will be initiated by respondents as a condition of EPA's consideration of the research when it is subsequently submitted to EPA.

FIFRA sections 3(c)(1)(F) and 3(c)(2)(B) authorize EPA to require various data in support of a pesticide's continued registration or an application for a new or amended pesticide registration. FIFRA section 12(a)(2)(P) forbids any person "to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test."

An agency may not conduct or sponsor, and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations codified in Chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9 for display purposes, and are also included on any related collection instrument (e.g., the form or survey instrument).

EPA anticipates that respondents will submit 30 studies that involve intentional dosing of human subjects under FIFRA or FFDCA to EPA per year and that the preparation of the required

information will require about 32 hours per study for a total estimated annual burden hours for affected entities of 960 hours, representing a total estimated annual paperwork cost of \$440,160. It is important to note that this total annual paperwork burden and cost estimate includes activities related to initial rule familiarization, as well as activities that researchers already perform and would continue to perform even without the Agency's rulemaking in this area (i.e., developing a protocol and maintaining records). The average annual burden on EPA for reviewing this information for each study submission is estimated to be 80 hours per study, representing a paperwork related labor cost of about \$14,672 per response and a total annual cost of \$440,160.

Under the PRA, "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.

Direct your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to EPA using the public docket that has been established for this proposed rule (docket ID number OPP-2003-0132) at <http://www.epa.gov/edocket/>. In addition, send a copy of your comments about the ICR to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, Attention: Desk Office for EPA ICR No. 2195.01. Since OMB is required to complete its review of the ICR between 30 and 60 days after September 12, 2005, please submit your ICR comments for OMB consideration to OMB by October 12, 2005.

The Agency will consider and address comments received on the information collection requirements contained in this proposal when it develops the final rule.

### C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, after considering the potential economic impacts of today's proposed rule on small entities, the Agency hereby certifies that this proposal will not have a significant adverse economic impact on a substantial number of small entities. This determination is based on the Agency's economic analysis performed for this rulemaking, which is summarized in Unit XIII.A., and a copy of which is available in the public docket for this rulemaking. The following is a brief summary of the factual basis for this certification.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined in accordance with the RFA 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.

As discussed in Unit XIII.A., the total annual cost to researchers covered by this proposed rule is estimated to be \$16,000, or under \$600 per study. This is a trivially small portion of the overall cost of performing such studies, each of which is estimated to cost from \$125,000 to \$500,000. After reviewing the history of EPA's consideration on human research in its various program offices, EPA estimates that the proposed rule would affect only a limited number of third-party human studies each year. Because both the number of affected studies is relatively small and the costs of compliance with the Common Rule are low, the potential overall costs to third parties are also small. Although we cannot predict whether or how many small entities might engage in the subject matter research in the future, the Agency expects that there will be no or minimal impact from this proposed rule on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on all aspects related to such impacts.

#### D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As described in Unit XIII.A., the estimated total costs associated with this action are approximately \$16,000 per year. This cost represents the incremental cost to researchers attributed to the additional procedural requirements contained in this proposal. Based on historical submissions, EPA has determined that State, local, and tribal governments rarely perform human research intended for submission to EPA under FIFRA or FFDCA. In addition, the proposed rule is not expected to significantly or uniquely affect small governments. Accordingly, this action is not subject to the requirements of sections 202 and 205 of UMRA.

#### E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have "federalism implications," because 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 the Order. As indicated earlier, instances where a state performs human research intended for submission to EPA under FIFRA or FFDCA are extremely rare. Therefore, this proposed rule may seldom affect a state government. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of the Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 6, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and

the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. As indicated previously, instances where a tribal government performs human research intended for submission to EPA under FIFRA or FFDCA are extremely rare. Thus, Executive Order 13175 does not apply to this proposed rule. In the spirit of the Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA specifically solicits comment on this proposed rule from tribal officials.

#### G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this proposed rule because this action is not designated as an "economically significant" regulatory action as defined by Executive Order 12866 (see Unit XIII.A.). Further, this proposal does not establish an environmental standard that is intended to have a negatively disproportionate effect on children. To the contrary, this action will provide added protections for children who may participate in the research covered by the proposed rule.

#### H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have any significant adverse effect on the supply, distribution, or use of energy.

#### I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 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 impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not propose to require specific methods or standards to generate those data. Therefore, this proposed rule does not impose any technical standards that would require

Agency consideration of voluntary consensus standards. The Agency invites comment on its conclusion regarding the applicability of voluntary consensus standards to this proposed rulemaking.

#### J. Executive Order 12898

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has not considered environmental justice-related issues. Although not directly impacting environmental justice-related concerns, the provisions of the proposed rule would require researchers to use procedures to ensure equitable selection of test subjects in covered human research.

#### XIV. Effective Date

EPA considers the expeditious application of these new protections to be in the public interest and accordingly proposes to provide no longer period than is essential between publication of a final rule and its effective date. The Agency believes a longer transition period is not likely to be necessary in light of the relatively few studies affected by this proposal.

FIFRA section 25(a)(4), 7 U.S.C. 136w(a)(4), provides that:

Simultaneously with the promulgation of any rule or regulation under this Act, the Administrator shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. The rule or regulation shall not become effective until the passage of 60 calendar days after the rule or regulation is so transmitted.

Since this regulation would be issued under the authority of FIFRA, this requirement defines the minimum time lapse after promulgation before a final rule could become effective. EPA thus proposes that the final rule would be effective 60 days after its promulgation and transmittal to Congress. EPA invites public comment on the timing of the effective date of the final rule.

#### List of Subjects in 40 CFR Part 26

Environmental protection, Human research subjects, Reporting and recordkeeping requirements.

Dated: September 6, 2005.

**Stephen L. Johnson,**  
Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 26—[AMENDED]**

1. By revising the authority citation for part 26 to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 136w(a)(1); 21 U.S.C. 346a(e)(1)(C); and 42 U.S.C. 300v-1(b).

2. By redesignating §§ 26.101 through 26.124 as subpart A and adding a new subpart heading to read as follows:

**Subpart A—Basic Federal Policy for Protection of Human Research Subjects**

3. By amending § 26.101 by adding paragraphs (j) and (k) to read as follows:

**§ 26.101 To what does this policy apply?**  
\* \* \* \* \*

(j) Except as provided in paragraphs (a) and (b) of this section, this policy applies to all research involving intentional exposure of a human subject if, at any time prior to initiating such research, any person who conducted or supported such research intended:

(1) To submit results of the research to EPA for consideration in connection with any regulatory action that may be performed by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) or section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a); or

(2) To hold the results of the research for later inspection by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) or section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a).

(k) For purposes of determining a person's intent under paragraph (j) of this section, EPA may consider any available information relevant to determining the intent of a person who conducts or supports research with human subjects after the effective date of the rule. EPA shall rebuttably presume such intent existed if:

(1) The person or the person's agent has submitted or made available for inspection the results of such research to EPA; or

(2) The person is a member of a class of people who, or whose products or activities, are regulated by EPA under FIFRA or the FFDCa and, at the time the research was initiated, the results of the research would be relevant to EPA's exercise of its authority under FIFRA or the FFDCa with respect to that class of people, products, or activities.

4. By amending § 26.102 by adding paragraph (k) to read as follows:

**§ 26.102 Definitions.**  
\* \* \* \* \*

(k) *Research involving intentional exposure of a human subject* means a

study of an environmental substance in which the exposure to the substance experienced by a human subject participating in the study would not have occurred but for the human subject's participation in the study.

5. By revising § 26.124 to read as follows:

**§ 26.124 Conditions.**

(a) With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

(b) *Prior submission and review of proposed human research.* Any person who intends to conduct human research covered by § 26.101(j) shall, after receiving approval from all appropriate IRBs, submit to EPA at least 90 days prior to initiating such research all information relevant to the proposed research specified by § 26.115(a) to be prepared and maintained by an IRB, and the following additional information, to the extent not otherwise covered:

(1) A discussion of:

(i) The potential risks to human subjects;

(ii) The measures proposed to minimize risks to the human subjects;

(iii) The expected benefits of such research, and to whom they would accrue;

(iv) Alternative means of obtaining information comparable to what would be collected through the proposed research; and

(v) The distribution and balance of risks and benefits of the proposed research.

(2) The information for subjects and written informed consent agreements as provided to the IRB, and as approved by the IRB.

(3) Information about how subjects will be recruited, including any advertisements proposed to be used.

(4) All correspondence between the IRB and the investigators or sponsors.

(5) Following initial evaluation of the protocol by Agency staff, EPA shall submit the protocol and all supporting materials, together with the staff evaluation, to the Human Studies Review Board. This Board shall consist of members who are not employed by the Agency, who meet the ethics requirements for special government employees, and who have expertise in fields appropriate for review of human research. The Board shall review and comment on the scientific and ethical aspects of research proposals and

reports of completed intentional dosing research with human subjects which EPA intends to rely on in its decision-making under FIFRA or FFDCa, and, on request, advise EPA on ways to strengthen its programs for protection of human subjects of research.

(c) *Submission of information pertaining to ethical conduct of completed human research.* Any person who submits to EPA data derived from human research covered by this subpart shall also provide to EPA information documenting compliance with the requirements of this subpart. Such information should include:

(1) Copies of all of the records relevant to the research specified by § 26.115(a) to be prepared and maintained by an IRB.

(2) Copies of sample records used to document informed consent as specified by § 26.117, but not identifying any subjects of the research.

(3) Copies of all correspondence, if any, between EPA and the researcher or sponsor pursuant to paragraph (b) of this section.

6. By adding new subparts B through F to read as follows:

**Subpart B—Additional Protections for Pregnant Women, Fetuses, and Newborns Involved in Research**

Sec.

§ 26.201 To what do these regulations apply?

§ 26.202 Definitions.

§ 26.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and neonates.

§ 26.204 Research involving pregnant women or fetuses.

§ 26.205 Research involving neonates.

§ 26.206 Research involving, after delivery, the placenta, the dead fetus, or fetal material.

§ 26.207–26.219 [Reserved]

§ 26.220 Prohibition of research involving intentional dosing of pregnant women, fetuses, or newborns.

§ 26.221 Prohibition of EPA reliance on research involving intentional dosing of pregnant women, fetuses, or newborns.

**Subpart C—Additional Protections Pertaining to Research Involving Prisoners as Subjects [Reserved]**

**Subpart D—Additional Protections for Children Involved as Subjects in Research**

§ 26.401 To what do these regulations apply?

§ 26.402 Definitions.

§ 26.403 IRB duties.

§ 26.404 Research not involving greater than minimal risk.

§ 26.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

§ 26.406 [Reserved]

§ 26.407 [Reserved]

- § 26.408 Requirements for permission by parents or guardians and for assent by children.
- § 26.409–26.419 [Reserved]
- § 26.420 Prohibition of research involving intentional dosing of children.
- § 26.421 Prohibition of EPA reliance on research involving intentional dosing of children.

#### Subpart E—Administrative Actions for Noncompliance

- § 26.501 Lesser administrative actions.
- § 26.502 Disqualification of an IRB or an institution.
- § 26.503 Public disclosure of information regarding revocation.
- § 26.504 Reinstatement of an IRB or an institution.
- § 26.505 Debarment.
- § 26.506 Actions alternative or additional to disqualification.

#### Subpart F—Ethical Standards for Assessing Whether to Rely on the Results of Human Research in EPA Regulatory Decisions

- § 26.601 Human research conducted prior to [effective date of the final rule].
- § 26.602 Human research conducted after [effective date of the final rule].
- § 26.603 Exceptions for human research.

#### Subpart B—Additional Protections for Pregnant Women, Fetuses, and Newborns Involved in Research

##### § 26.201 To what do these regulations apply?

(a) Except as provided in paragraph (b) of this section, this subpart applies to all research involving pregnant women, human fetuses, neonates of uncertain viability, or nonviable neonates conducted or supported by the Environmental Protection Agency (EPA). This includes all research conducted in EPA facilities by any person and all research conducted in any facility by EPA employees. This subpart also applies to all research involving pregnant women, human fetuses, neonates of uncertain viability, or nonviable neonates covered by § 26.101(j).

(b) The exemptions at § 26.101(b)(1) through (b)(6) are applicable to this subpart.

(c) The provisions of § 26.101(c) through (i) are applicable to this subpart. Reference to State or local laws in this subpart and in § 26.101(f) is intended to include the laws of federally recognized American Indian and Alaska Native Tribal Governments.

(d) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

##### § 26.202 Definitions.

The definitions in § 26.102 shall be applicable to this subpart as well. In addition, the definitions at 45 CFR 46.202(a) through (f) and at 45 CFR

46.202(h) are applicable to this subpart. For purposes of this part, Administrator means the Administrator of the Environmental Protection Agency and any other officer or employee of the Environmental Protection Agency to whom authority has been delegated.

##### § 26.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and neonates.

The provisions of 45 CFR 46.203 are applicable to this section.

##### § 26.204 Research involving pregnant women or fetuses.

The provisions of 45 CFR 46.204 are applicable to this section.

##### § 26.205 Research involving neonates.

The provisions of 45 CFR 46.205 are applicable to this section.

##### § 26.206 Research involving, after delivery, the placenta, the dead fetus, or fetal material.

The provisions of 45 CFR 46.206 are applicable to this section.

##### § 26.207–26.219 [Reserved]

##### § 26.220 Prohibition of research involving intentional dosing of pregnant women, fetuses, or newborns.

Notwithstanding any other provision of this part, under no circumstances shall EPA or a person when covered by § 26.101(j) conduct or support research involving intentional dosing of any pregnant woman, fetus, or newborn.

##### § 26.221 Prohibition of EPA reliance on research involving intentional dosing of pregnant women, fetuses, or newborns.

In its regulatory decision-making under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) or section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), EPA shall not rely on any research involving intentional dosing of any pregnant women, fetuses, or newborns, except when such research is deemed scientifically sound and crucial to the protection of public health, under the procedure defined in § 26.603.

#### Subpart C—Additional Protections Pertaining to Research Involving Prisoners as Subjects [Reserved]

#### Subpart D—Additional Protections for Children Involved as Subjects in Research

##### § 26.401 To what do these regulations apply?

(a) This subpart applies to all research involving children as subjects, conducted or supported by EPA. This subpart also applies to all research

involving children covered by § 26.101(j).

(1) This includes research conducted by EPA employees, except that each head of an Office of the Agency may adopt such nonsubstantive, procedural modifications as may be appropriate from an administrative standpoint.

(2) It also includes research conducted or supported by EPA outside the United States, but in appropriate circumstances, the Administrator may, under § 26.101(e), waive the applicability of some or all of the requirements of these regulations for research of this type.

(b) Exemptions at § 26.101(b)(1) and (b)(3) through (b)(6) are applicable to this subpart. The exemption at § 26.101(b)(2) regarding educational tests is also applicable to this subpart. However, the exemption at § 26.101(b)(2) for research involving survey or interview procedures or observations of public behavior does not apply to research covered by this subpart, except for research involving observation of public behavior when the investigator(s) do not participate in the activities being observed.

(c) The exceptions, additions, and provisions for waiver as they appear in § 26.101(c) through (i) are applicable to this subpart.

##### § 26.402 Definitions.

The definitions in § 26.102 shall be applicable to this subpart as well. In addition, as used in this subpart:

(a) *Children* are persons who have not attained the age of 18.

(b) *Assent* means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

(c) *Permission* means the agreement of parent(s) or guardian to the participation of their child or ward in research.

(d) *Parent* means a child's biological or adoptive parent.

(e) *Guardian* means an individual who is authorized under applicable State, Tribal, or local law to consent on behalf of a child to general medical care.

##### § 26.403 IRB duties.

The provisions of 45 CFR 46.403 are applicable to this section.

##### § 26.404 Research not involving greater than minimal risk.

EPA will conduct or fund research in which the IRB finds that no greater than minimal risk to children is presented, only if the IRB finds that adequate provisions are made for soliciting the assent of the children and the

permission of their parents or guardians, as set forth in § 26.408.

**§ 26.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.**

EPA will conduct or fund research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the IRB finds and documents that:

(a) The risk is justified by the anticipated benefit to the subjects.

(b) The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches.

(c) Adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians, as set forth in § 26.408.

**§ 26.406 [Reserved]**

**§ 26.407 [Reserved]**

**§ 26.408 Requirements for permission by parents or guardians and for assent by children.**

(a) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine that adequate provisions are made for soliciting the assent of the children, when in the judgment of the IRB the children are capable of providing assent. In determining whether children are capable of assenting, the IRB shall take into account the ages, maturity, and psychological state of the children involved. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with § 26.116(d).

(b) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine, in accordance with and to the extent that consent is required by § 26.116, that

adequate provisions are made for soliciting the permission of each child's parents or guardian. Where parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for research to be conducted under § 26.404 or § 26.405.

(c) In addition to the provisions for waiver contained in § 26.116, if the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements in subpart A of this part and paragraph (b) of this section, provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with Federal, State or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

(d) Permission by parents or guardians shall be documented in accordance with and to the extent required by § 26.117.

(e) When the IRB determines that assent is required, it shall also determine whether and how assent must be documented.

**§§ 26.409–26.419 [Reserved]**

**§ 26.420 Prohibition of research involving intentional dosing of children.**

Notwithstanding any other provision of this part, under no circumstances shall EPA or a person when covered by § 26.101(j) conduct or support research involving intentional dosing of any child.

**§ 26.421 Prohibition of EPA reliance on research involving intentional dosing of children.**

In its regulatory decision-making under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) or section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), EPA shall not rely on any research involving intentional dosing of any child, except when such research is deemed scientifically sound and crucial to the protection of public health, under the procedure defined in § 26.603.

**Subpart E—Administrative Actions for Noncompliance**

**§ 26.501 Lesser administrative actions.**

(a) If apparent noncompliance with the applicable regulations in subparts A through D of this part concerning the operation of an IRB is observed by a duly authorized investigator during an inspection, the inspector will present an oral or written summary of observations to an appropriate representative of the IRB. EPA may subsequently send a letter describing the noncompliance to the IRB and to the parent institution. The agency will require that the IRB or the parent institution respond to this letter within a time period specified by EPA and describe the corrective actions that will be taken by the IRB, the institution, or both to achieve compliance with these regulations.

(b) On the basis of the IRB's or the institution's response, EPA may schedule a reinspection to confirm the adequacy of corrective actions. In addition, until the IRB or the parent institution takes appropriate corrective action, the Agency may:

(1) Withhold approval of new studies subject to the requirements of this part that are conducted at the institution or reviewed by the IRB;

(2) Direct that no new subjects be added to ongoing studies subject to this part;

(3) Terminate ongoing studies subject to this part when doing so would not endanger the subjects; or

(4) When the apparent noncompliance creates a significant threat to the rights and welfare of human subjects, notify relevant State and Federal regulatory agencies and other parties with a direct interest in the agency's action of the deficiencies in the operation of the IRB.

(c) The parent institution is presumed to be responsible for the operation of an IRB, and EPA will ordinarily direct any administrative action under this subpart against the institution. However, depending on the evidence of responsibility for deficiencies, determined during the investigation, EPA may restrict its administrative actions to the IRB or to a component of the parent institution determined to be responsible for formal designation of the IRB.

**§ 26.502 Disqualification of an IRB or an institution.**

(a) Whenever the IRB or the institution has failed to take adequate steps to correct the noncompliance stated in the letter sent by the Agency under § 26.501(a) and the EPA Administrator determines that this noncompliance may justify the

disqualification of the IRB or of the parent institution, the Administrator may institute appropriate proceedings.

(b) The Administrator may disqualify an IRB or the parent institution if the Administrator determines that:

(1) The IRB has refused or repeatedly failed to comply with any of the regulations set forth in this part, and

(2) The noncompliance adversely affects the rights or welfare of the human subjects of research.

(c) If the Administrator determines that disqualification is appropriate, the Administrator will issue an order that explains the basis for the determination and that prescribes any actions to be taken with regard to ongoing human research, covered by subparts A through D of this part, conducted under the review of the IRB. EPA will send notice of the disqualification to the IRB and the parent institution. Other parties with a direct interest, such as sponsors and investigators, may also be sent a notice of the disqualification. In addition, the agency may elect to publish a notice of its action in the **Federal Register**.

(d) EPA may refuse to consider in support of a regulatory decision the data from human research, covered by subparts A through D of this part, that was reviewed by a disqualified IRB or conducted at a disqualified institution, unless the IRB or the parent institution is reinstated as provided in § 26.504, or unless such research is deemed scientifically sound and crucial to the protection of public health, under the procedure defined in § 26.603.

**§ 26.503 Public disclosure of information regarding revocation.**

A determination that EPA has disqualified an institution and the administrative record regarding that determination are disclosable to the public under 40 CFR part 2.

**§ 26.504 Reinstatement of an IRB or an institution.**

An IRB or an institution may be reinstated if the Administrator determines, upon an evaluation of a written submission from the IRB or institution that explains the corrective action that the institution or IRB plans to take, that the IRB or institution has provided adequate assurance that it will operate in compliance with the

standards set forth in this part. Notification of reinstatement shall be provided to all persons notified under § 26.501(c).

**§ 26.505 Debarment.**

If EPA determines that an institution or investigator repeatedly has not complied with or has committed an egregious violation of the applicable regulations in subparts A through D of this part, EPA may recommend that institution or investigator be declared ineligible to participate in EPA-supported research (debarment). Debarment will be initiated in accordance with procedures specified at 40 CFR part 32.

**§ 26.506 Actions alternative or additional to disqualification.**

Disqualification of an IRB or of an institution is independent of, and neither in lieu of nor a precondition to, other statutorily authorized proceedings or actions. EPA may, at any time, on its own initiative or through the Department of Justice, institute any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in lieu of, and before, at the time of, or after, disqualification. The Agency may also refer pertinent matters to another Federal, State, or local government agency for any action that that agency determines to be appropriate.

**Subpart F—Ethical Standards for Assessing Whether to Rely on the Results of Human Research in EPA Regulatory Decisions**

**§ 26.601 Human research conducted prior to [effective date of the final rule].**

Unless there is clear evidence that the conduct of that research was fundamentally unethical (e.g., the research was intended to seriously harm participants or failed to obtain informed consent), or was significantly deficient relative to the ethical standards prevailing at the time the research was conducted, EPA will generally accept and rely on relevant, scientifically valid data from research that:

(a) Was initiated prior to [effective date of the final rule],

(b) Involved intentional exposure of a human subject,

(c) Did not involve intentional exposure of a pregnant woman, fetus, newborn, or child, and

(d) Is being considered under the Federal Insecticide, Fungicide, and Rodenticide Act or the Federal Food, Drug, and Cosmetic Act.

**§ 26.602 Human research conducted after [effective date of the final rule].**

EPA will generally accept and rely on relevant, scientifically valid data from research that:

(a) Was initiated after [effective date of the final rule],

(b) Involved intentional exposure of a human subject,

(c) Did not involve intentional exposure of a pregnant woman, fetus, newborn, or child, and

(d) Is being considered under the Federal Insecticide, Fungicide, and Rodenticide Act or the Federal Food, Drug, and Cosmetic Act only if EPA has adequate information to determine that the research was conducted in a manner that substantially complies with subparts A through D of this part.

**§ 26.603 Exceptions for human research.**

(a) Before reaching a decision not to rely on scientifically useful and relevant data derived from research that does not meet the applicable standards of §§ 26.601 through 26.602, or that involves intentional exposure of a pregnant woman, fetus, newborn, or child, EPA will consider whether the data are crucial to a regulatory decision that would be more protective of public health than could be justified without relying on the data.

(b) Before making a decision under this section, EPA will solicit the views of the Human Studies Review Board and provide an opportunity for public comment.

(c) If EPA decides to rely on data derived from a study that does not meet the applicable standards of §§ 26.601 through 26.602, EPA will include in the explanation of its decision a thorough discussion of the significant ethical deficiencies of the study, as well as the full rationale for concluding that relying on the study is crucial to protection of public health.

[FR Doc. 05-18010 Filed 9-8-05; 9:19 am]

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# Federal Register

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**Monday,  
September 12, 2005**

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## **Part III**

# **Department of Transportation**

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**Federal Transit Administration**

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**FTA Fiscal Year 2005 Apportionments,  
Allocations and Program Information;  
Notice of Supplemental Information,  
Changes, and Corrections; Notice**

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****FTA Fiscal Year 2005 Apportionments, Allocations and Program Information; Notice of Supplemental Information, Changes, and Corrections**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice makes the full amount of the FTA fiscal year (FY) 2005 program apportionments or allocations available for obligation. In addition, it announces changes and corrections to the December 29, 2004, "FTA Fiscal Year 2005 Apportionments, Allocations and Program Information; Notice," based on language in the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)," (Pub. L. 109-59); technical amendments for transit in the "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005" (Pub. L. 109-13, hereafter called the 2005 Emergency Supplemental Appropriations Act); congressional clarifications; and FTA's administrative decision to extend the period of availability of FY 2005 Elderly and Persons with Disabilities Program (section 5310) funding.

**FOR FURTHER INFORMATION CONTACT:** The appropriate FTA Regional Administrator or Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366-2053.

**I. Funds Available for Obligation**

SAFETEA-LU, signed into law by President Bush on August 10, 2005, reauthorizes transit and highway programs through September 30, 2009. The authorized transit programs are detailed in the Act as are program funding levels for FY 2005 through FY 2009.

SAFETEA-LU authorizes FY 2005 transit program funding levels at the same levels specified in the Consolidated Appropriations Act, 2005 (Pub. L. 108-447, December 8, 2005; hereafter called the 2005 Appropriations Act) as adjusted in the 2005 Emergency Supplemental Appropriations Act for the New Starts program. The program funding tables published in the December 29, 2004, Notice reflect the FY 2005 appropriated funding level for each program. The amount shown in the "Apportionment" or "Allocation" column of a table is the full amount now available for obligation by grantees, with

the exception that amounts in some tables have been revised by FTA. The revised tables are included in this document and supersede those contained in the December 29, 2004, Notice.

The amount shown in the "Apportionment" or "Allocation" column includes both trust funds (contract authority) and general funds, and reflects the total dollar amount of obligation limitation and appropriations in the 2005 Appropriations Act. The authorized amounts for FY 2005 in SAFETEA-LU reflect the 0.80 percent rescission, which was applied proportionately to the discretionary budget authority and obligation limitation, and to each program, project and activity.

This document is posted on the FTA Web site at [http://www.fta.dot.gov/25\\_ENG\\_HTML.htm](http://www.fta.dot.gov/25_ENG_HTML.htm). It is also available by calling the regional office. Each regional office will also distribute this notice by e-mail to its mailing list.

**II. Changes and Corrections**

The information in the following paragraphs describes changes or corrections to the December 29, 2004, Notice. The changes are the result of compliance with overriding language in SAFETEA-LU or the 2005 Emergency Supplemental Appropriations Act; execution of an FTA administrative decision to extend the availability of section 5310 funds; implementation of changes for Bus and New Starts projects based on congressional correspondence on clarifications or technical corrections; Federal Highway Administration (FHWA) allotment of funds to FTA for certain projects identified in the conference report accompanying the 2005 Appropriations Act under section 117; and/or correction of errors identified by FTA.

**A. Section 5309 Bus and Bus-Related Allocations (FY 2005 and Prior Years)**

In the **Federal Register** Notice published December 29, 2004, two FY 2002 projects extended in the conference report were not included in Table 10 because the balances for these projects were included in amounts transferred to the New Starts program. In response to technical amendments included in the 2005 Emergency Supplemental Appropriations Act, these two projects have been added to the list of extended projects: WV, Morgantown Parking Facility and WY, Southern Teton Area Rapid Transit bus facility. In addition to these two projects, FTA is now able to honor intentions to extend lapsing earmarks expressed by Congress in either the House or Senate Committee

Reports accompanying the 2005 Appropriations Act, and to extend a project that was reprogrammed in the Senate report. These projects have been added to Table 10.

Footnotes to the table describe the source of each action and the period of availability of reprogrammed projects. They also explain clarifications contained in letters to FTA from the House and Senate Appropriation Subcommittee Chairmen, and, where applicable, correction of a previously published balance.

For additional details or questions on a specific project please contact the appropriate FTA regional office or Ryan Hammon at (202) 366-2053.

**B. Section 5309 New Starts Allocations (FY 2005 and Prior Years)**

Table 11 shows revised FY 2005 section 5309 New Starts Allocations. The revised amounts are due to language in section 6061 of the 2005 Emergency Supplemental Appropriations Act, which reduced the amount allocated to eleven Full Funding Grant Agreement (FFGA) projects, which had been appropriated funds in excess of what was required to complete the FFGA. This technical amendment also corrected the amounts appropriated for the Northern New Jersey, Newark Elizabeth Rail Line MOS-1 and Northern New Jersey, Hudson-Bergen MOS-1 projects, which had been misnamed and switched in the original appropriation.

The allocation amount has been revised for the following projects:

- Los Angeles, MOS 3 Metro Rail (North Hollywood).
- Fort Lauderdale, South Florida Commuter Rail Upgrades.
- New Orleans, Canal Street Streetcar Project.
- Washington, DC/Metropolitan Area, Largo Extension.
- Minneapolis, Hiawatha Light Rail Project.
- St. Louis, Metro Link St. Clair Extension.
- Northern New Jersey, Newark Elizabeth Rail Line MOS-1.
- Northern New Jersey, Hudson-Bergen MOS-1.
- Pittsburgh, Stage II Light Rail Transit Reconstruction.
- Salt Lake City, CBD to University LRT.
- Salt Lake City, Medical Center Extension.

The unallocated balance in Table 11 reflects the reduction in the amount of funds transferred to the FY 2005 New Starts program from prior year unobligated balances.

As promised in the December 29, 2004 Notice, a list of the prior year projects for which the balances were

transferred to New Starts is provided as follows:

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<b>Balances for Prior Year Projects Transferred to New Starts</b>	
Project Description	Amount
(P. L. 106-346)	
NV - Lake Tahoe Natural Gas Buses	167,397
MA/NH - Lowell, Massachusetts-Nashua, New Hampshire Commuter Rail Project	1,195,286
Total	1,362,683
(P.L. 107-87)	
FL - Miami Beach	2,970,087
GA - Chatham Area Transit Buses	2,960,002
NH - Ossipee	1,425,646
OH - Butler County	990,019
IA - Sioux City, Iowa, Light Rail Project	1,683,022
MA/NH - Lowell, Massachusetts-Nashua, New Hampshire Commuter Rail Project	2,970,039
Total	12,998,815
<p><b>Note:</b> The corrections enabled by Sec. 6061 of P.L. 109-13 are incorporated in the tables for current year and prior year extended projects for New Starts and Bus.</p>	

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There was one change to the extended projects listed in Table 12—Prior Year Unobligated Section 5309 New Starts Allocations. The unobligated amount for the Northeast Indianapolis, Indiana, Downtown Corridor Project was changed from \$5,228,042 to \$5,068,042 to reflect a previous obligation.

*C. Fixed Guideway Modernization Adjustment*

Language in sections 3035 and 3041 of SAFETEA-LU provides for the inclusion of Morgantown, WV as an eligible urbanized area for fixed guideway modernization apportionments. The language further directs that the FY 2005 fixed guideway modernization apportionments be adjusted (or recalculated) with the Morgantown fixed guideway mileage included. The FY 2005 fixed guideway modernization apportionments and unit values for the formula factors (route miles and vehicle revenue miles) have been revised accordingly, and are displayed in Table 7 and Table 5, respectively.

*D. Technical Correction to Section 198 of the 2005 Appropriations Act*

Section 198 of the 2005 Appropriations Act states, "For the purpose of any applicable law, for fiscal years 2004 and 2005, the city of Norman, Oklahoma, shall be considered to be part of the Oklahoma City urbanized area." This provision has an unintended impact on the section 5307 apportionments for these urbanized areas, and also affects the apportionment of all urbanized areas with a population less than 1 million. In anticipation of a legislative technical correction, FTA did not apply this provision when apportioning FY 2005 section 5307 funds in the December 29, 2004, Notice.

Language in section 6063 of the 2005 Emergency Supplemental Appropriations Act amends section 198 to make clear that the provision is applicable to apportioning Federal-aid highway funds only. FTA apportionments are not affected.

*E. Period of Availability for FY 2005 Section 5310 Extended*

The period of availability for funds appropriated for the Elderly and Persons with Disabilities Program (49 U.S.C. 5310) is administratively established at

one fiscal year. The December 29, 2004, Notice of FTA FY 2005 Apportionments and Allocations noted that FY 2005 funds allocated to the States under section 5310 must be obligated by September 30, 2005.

Due to the delayed availability of the full year's apportionment of FY 2005 section 5310 funds and the limited period during which the funds may be obligated, FTA is extending the period of availability for FY 2005 section 5310 funds by six months to provide flexibility to States that may need additional time to obligate all the FY 2005 funds. With this six-month extension, FY 2005 funds apportioned to States under section 5310 must be obligated by March 31, 2006.

*F. FHWA Allotment of Section 117 Funds to FTA*

Section 117 of the 2005 Appropriations Act references House Report 108-792 list of projects identified in the conference report, a number of which are transit projects, that are designated to receive funding from FHWA funding sources. To date, FHWA has allotted funding to FTA to administer several of the projects that are transit in nature. The projects and

allotted funding are shown in the table below.

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<b>FHWA SECTION 117 PROJECT ALLOTMENTS TO FTA</b>			
<b>State</b>	<b>Project Description</b>	<b>Designated</b>	
		<b>Amount 1/</b>	<b>Allotment 2/</b>
Georgia	Clifton Corridor Urban Transit Link Study, Georgia	\$ 500,000	\$ 330,667
Illinois	95th Street/Dan Ryan Intermodal Improvements	\$ 1,000,000	\$ 661,333
Indiana	N. Indiana Commuter Transportation District, South Shore Commuter Rail	\$ 1,500,000	\$ 992,000
Michigan	Ann-Arbor-Detroit Commuter Rail	\$ 1,500,000	\$ 992,000
Michigan	Detroit Center City Loop, Michigan	\$ 1,000,000	\$ 661,333
New York	Nassau County, NY HUB	\$ 1,500,000	\$ 992,000
New York	Second Avenue Subway, New York	\$ 2,500,000	\$ 1,653,333
Pennsylvania	California University Pennsylvania Urban MAGLEV	\$ 2,500,000	\$ 1,653,333
Wisconsin	Transport 2020, Madison, WI	\$ 500,000	\$ 330,667
Total.....		\$ 12,500,000	\$ 8,266,666

1/ Designated amount in Conference Report H.R. 108-792.  
 2/ Allotment as of the date of publication of this notice is 8/12 of the designated amount, after the 0.80 percent across-the-board rescission. FHWA will allot the balance at a later date.

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*G. FTA Correction*

The following correction is noted to information in the December 29, 2004, Notice.

- On page 78213, the heading on the table under paragraph I should read "RTAP" instead of "EMSP:."

- On page 78214-78215, under paragraph "M. Over-the-Road Bus Accessibility Program," the amounts allocable to providers for intercity fixed-route service and to other providers of over the road services (as specified in second the paragraph under subsection heading "1. Total Allocation") should

read \$5,208,000 and \$1,686,400, respectively, instead of \$5,239,744 and \$1,654,666.

Issued on: September 6, 2005.

**Jennifer L. Dorn,**  
*Administrator.*

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## FEDERAL TRANSIT ADMINISTRATION

TABLE 1

(Appropriation amounts include a 0.80 percent reduction directed by Section 122 of Division J of the Consolidated Appropriations Act, 2005, P. L. 108-447)

REVISED FY 2005 APPROPRIATIONS, APPORTIONMENTS, AND AVAILABLE FUNDING FOR GRANT PROGRAMS	
SOURCE OF FUNDS	APPROPRIATION & APPORTIONMENT
<b>TRANSIT PLANNING AND RESEARCH PROGRAMS</b>	
Section 5303 Metropolitan Planning Program	\$59,902,515
Reapportioned Funds Added	726,331
Total Apportioned	<u>\$60,628,846</u>
Section 5313(b) State Planning and Research Program	\$12,513,485
Reapportioned Funds Added	146,114
Total Apportioned	<u>\$12,659,599</u>
Section 5311(b)(2) Rural Transit Assistance Program (RTAP)	\$5,208,000
Total Apportioned	<u>\$5,208,000</u>
Section 5314 National Planning and Research Program	\$37,200,000
<b>FORMULA GRANTS PROGRAM</b>	<u>\$3,950,317,600</u> <sup>a/</sup>
Alaska Railroad (Section 5307)	4,811,150
Less Oversight (one-half percent)	(24,056)
Total Available	<u>4,787,094</u>
Section 5308 Clean Fuels Formula Program	0 <sup>a/</sup>
Over-the-Road Bus Accessibility Program	6,894,400
Section 5307 Urbanized Area Formula Program	
91.23% of Total Available for Sections 5307, 5311, and 5310	\$3,593,195,773
Less Oversight (one-half percent)	(17,965,979)
Total Apportioned	<u>\$3,575,229,794</u>
Section 5311 Nonurbanized Area Formula Program	
6.37% of Total Available for Sections 5307, 5311, and 5310	\$250,889,588
Less Oversight (one-half percent)	(1,254,448)
Total Apportioned	<u>\$249,635,140</u>
Section 5310 Elderly and Persons with Disabilities Formula Program	
2.4% of Total Available for Sections 5307, 5311, and 5310	\$94,526,689
Total Apportioned	<u>\$94,526,689</u>
<b>CAPITAL INVESTMENT PROGRAM</b>	<u>\$3,361,714,400</u>
Section 5309 Fixed Guideway Modernization	\$1,204,684,800
Less Oversight (one percent)	(12,046,848)
Total Apportioned	<u>\$1,192,637,952</u>
Section 5309 Bus and Bus-Related	\$719,200,000 <sup>b/</sup>
Less Oversight (one percent)	(7,192,000)
Total Allocated	<u>\$712,008,000</u>
Section 5309 New Starts	\$1,437,829,600
Less Oversight (one percent)	(14,378,296)
Reallocated Funds Added	14,361,498 <sup>c/</sup>
Total Allocated	<u>\$1,437,812,802</u>
<b>JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21)</b>	\$124,000,000
<b>TOTAL APPROPRIATION (Above Grant Programs)</b> . . . . .	<b>\$7,550,856,000</b>
<b>TOTAL APPORTIONMENT/ALLOCATION (Above Grant Programs)</b> . . . . .	<b>\$7,513,228,316</b>

a/ The Consolidated Appropriations Act, 2005 transfers funds appropriated for the Clean Fuels Formula Program to the Section 5309 Bus and Bus-Related Facilities category.

b/ Includes funds transferred from the Clean Fuels Program.

c/ Includes reallocated funds from Bus and New Starts projects: \$1,362,683 from projects funded under P.L. 106-346 and \$12,998,815 from projects funded under P.L. 107-87.

FEDERAL TRANSIT ADMINISTRATION

TABLE 5

REVISED FISCAL YEAR 2005 FORMULA PROGRAMS APPORTIONMENT DATA UNIT VALUES

	<u>APPORTIONMENT UNIT VALUE</u>
<b>Section 5307 Urbanized Area Formula Program - Bus Tier</b>	
Urbanized Areas Over 1,000,000:	
Population .....	\$3.02529684
Population x Density .....	\$0.00076761
Bus Revenue Vehicle Mile .....	\$0.40607118
Urbanized Areas Under 1,000,000:	
Population .....	\$2.77256546
Population x Density .....	\$0.00121310
Bus Revenue Vehicle Mile .....	\$0.53782054
Bus Incentive (PM denotes Passenger Mile):	
<u>Bus PM x Bus PM =</u> Operating Cost .....	\$0.00727312
<b>Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier</b>	
Fixed Guideway Revenue Vehicle Mile .....	\$0.61127338
Fixed Guideway Route Mile .....	\$34,324
Commuter Rail Floor .....	\$7,739,160
Fixed Guideway Incentive:	
<u>Fixed Guideway PM x Fixed Guideway PM =</u> Operating Cost .....	\$0.00061923
Commuter Rail Incentive Floor .....	\$355,349
<b>Section 5307 Urbanized Area Formula Program - Areas Under 200,000</b>	
Population .....	\$5.59676779
Population x Density .....	\$0.00277804
<b>Section 5311 Nonurbanized Area Formula Program</b>	
Areas Under 50,000	
Population .....	\$2.78498039

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
<b>Legislatively Specified Areas:</b>						
Revenue Vehicle Mile	\$0.03043443	-----	\$0.13671435	\$0.03549322	\$0.02340212	\$0.12193985
Route Mile	\$2,122.43	-----	\$7,825.39	\$2,669.44	\$1,760.07	\$9,171.09
<b>Other Urbanized Areas:</b>						
Revenue Vehicle Mile	\$0.16288440	\$0.00576164	\$0.13671435	\$0.07812828	\$0.06377819	\$0.49848704
Route Mile	\$4,758.70	\$168.33	\$7,825.39	\$2,486.68	\$2,029.94	\$15,865.92

**FEDERAL TRANSIT ADMINISTRATION  
TABLE 7**

**REVISED FY 2005 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS**

STATE	AREA	APPORTIONMENT
Alaska	Anchorage, AK - Alaska Railroad	\$1,948,481
Arizona	Phoenix-Mesa, AZ	2,288,197
California	Antioch, CA	1,815,501
California	Concord, CA	10,696,142
California	Lancaster-Palmdale, CA	1,832,724
California	Los Angeles-Long Beach-Santa Ana, CA	33,466,103
California	Mission Viejo, CA	1,220,093
California	Oxnard, CA	1,016,780
California	Riverside-San Bernardino, CA	3,372,374
California	Sacramento, CA	2,969,749
California	San Diego, CA	12,464,673
California	San Francisco-Oakland, CA	68,593,473
California	San Jose, CA	11,774,442
California	Thousand Oaks, CA	559,600
Colorado	Denver-Aurora, CO	3,043,358
Connecticut	Hartford, CT	1,514,948
Connecticut	Southwestern Connecticut	38,831,602
District of Columbia	Washington, DC-VA-MD	63,617,713
Florida	Jacksonville, FL	100,980
Florida	Miami, FL	17,830,472
Florida	Orlando, FL	140,983
Florida	Tampa-St. Petersburg, FL	116,010
Georgia	Atlanta, GA	24,734,461
Hawaii	Honolulu, HI	1,059,304
Illinois	Chicago, IL-IN	139,241,844
Illinois	Round Lake Beach-McHenry-Grayslake, IL-WI	1,943,575
Indiana	South Bend, IN-MI	695,195
Louisiana	New Orleans, LA	3,055,310
Maryland	Baltimore Commuter Rail	18,614,513
Maryland	Baltimore, MD	8,681,792
Massachusetts	Boston, MA	72,593,548
Massachusetts	Worcester, MA-CT	862,656
Michigan	Detroit, MI	308,066
Minnesota	Minneapolis-St. Paul, MN	5,938,675
Missouri	Kansas City, MO-KS	28,199
Missouri	St. Louis, MO-IL	3,982,424
New Jersey	Atlantic City, NJ	1,443,804
New Jersey	Northeastern New Jersey	86,074,740
New Jersey	Trenton, NJ	1,340,805
New York	Buffalo, NY	1,170,564
New York	New York	361,658,709
New York	Poughkeepsie-Newburgh, NY	1,814,517
Ohio	Cleveland, OH	12,769,391
Ohio	Dayton, OH	4,849,823
Oregon	Portland, OR-WA	3,953,092
Pennsylvania	Harrisburg, PA	684,548
Pennsylvania	Philadelphia, PA-NJ-DE-MD	93,987,787
Pennsylvania	Pittsburgh, PA	20,360,560
Puerto Rico	San Juan, PR	2,027,539
Rhode Island	Providence, RI-MA	2,268,732
Tennessee	Chattanooga, TN-GA	80,307
Tennessee	Memphis, TN-MS-AR	200,419
Texas	Dallas-Fort Worth-Arlington, TX	5,237,137
Texas	Houston, TX	6,940,690
Virginia	Virginia Beach, VA	1,202,930
Washington	Seattle, WA	21,710,369
West Virginia	Morgantown, WV	950,302
Wisconsin	Madison, WI	708,210
Wisconsin	Milwaukee, WI	249,017
<b>TOTAL</b>		<b>\$1,192,637,952</b>

## FEDERAL TRANSIT ADMINISTRATION

TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
AK	Alaska Mental Health Trust bus program, Alaska	\$971,779
AK	Alaska Native Medical Center intermodal bus/parking facility, Alaska	1,943,557
AK	Anchorage Museum/Transit intermodal depot, Alaska	1,457,667
AK	Anchorage paratransit and disability improvements, Alaska	1,457,667
AK	Anchorage Ship Creek intermodal facility, Alaska	2,429,445
AK	Copper River Transit program, Alaska	1,457,667
AK	Juneau bus replacement, Alaska	971,779
AK	Kenai Central Area Rural Transit System bus replacement, Alaska	1,360,489
AK	Knik Arm intermodal facility terminal, Alaska	1,457,667
AK	Port of Anchorage intermodal facility, Alaska	2,429,445
AK	Skagway bus terminal development, Alaska	1,943,557
AK	Whittier intermodal facility, Alaska	1,457,667
AL	Alabama State Docks intermodal facility, Alabama	9,717,782
AL	Birmingham Intermodal Facility- Phase II, Alabama	3,401,224
AL	City of Orange Beach senior activity bus, Alabama	97,177
AL	Cleveland Avenue YMCA bus, Alabama	194,357
AL	Jacksonville State University buses, Alabama	1,943,557
AL	Montgomery buses, Alabama	680,245
AL	Oakwood College shuttle bus project, Alabama	145,767
AL	Tombigbee Regional Commission vehicle facility, Alabama	242,945
AL	University of Alabama at Huntsville Intermodal Facility, Alabama	3,887,113
AL	Vans, CASA of Marshall County, Alabama	97,177
AL	Vehicles for Senior Citizen Transportation in Alabama	971,779
AR	Arkansas Statewide buses and bus facilities	7,774,226
AR	CATA bus replacement, Arkansas	388,711
AZ	Alternative fuel replacement buses, Tucson, Arizona	971,779
AZ	Coconino County - Flagstaff bus system, Arizona	1,360,489
AZ	Coconino County - Sedona bus system, Arizona	2,526,623
AZ	Dial-a-Ride facility, Phoenix, Arizona	340,123
AZ	Downtown Tempe Transit Center, Arizona	777,422
AZ	East Valley bus maintenance facility, Arizona	6,753,859
AZ	Phoenix, Glendale, and Avondale bus replacement, Arizona	1,457,667
AZ	Phoenix/Glendale West Valley operating facility, Arizona	3,401,224
AZ	Sun Tran CNG replacement buses, Tucson, Arizona	2,672,390
CA	Anaheim Resort Transit, California	291,534
CA	Bellflower Dial-a-Ride, California	116,614
CA	Calabasas Transit, California	485,888
CA	Catalina Transit Terminal, Redondo Beach, California	971,779
CA	Cerritos Clean Air Buses, California	826,011
CA	Claremont Intermodal Transit Village Project, California	194,357
CA	Collegian Avenue Busway, California	388,711
CA	Downtown transit center ITS, California	97,177
CA	Ed Roberts Campus/City of Berkeley, California	485,888
CA	El Garces Intermodal Station, Needles, California	971,779
CA	Elk Grove Park and Ride Facilities, California	971,779
CA	Fairfield/Vacaville Intermodal Transit Station, California	485,888
CA	Fresno Area Express bus program, California	971,779
CA	Golden Empire Transit traffic signal priority, California	291,534
CA	Hemet Transit Center bus facility, California	340,123
CA	I-15 Managed Lanes/Bus Rapid Transit, San Diego, California	1,652,023
CA	LAVTA buses and bus facilities, California	485,888
CA	LAVTA satellite maintenance, operations and administrative facility, California	291,534
CA	Long Beach Transit bus purchase, California	485,888
CA	Los Angeles County MTA bus program, California	1,943,557
CA	Los Angeles Trade Tech intermodal links with bus and Metro, California	485,888
CA	Los Angeles Valley College bus station extension, California	485,888
CA	Mammoth Lakes Regional Transit operations facility, California	971,779
CA	Metro Red Line Wilshire Vermont Station upgrade, California	728,834
CA	Modesto bus facility, California	971,779
CA	Montrey Salinas Transit buses, California	971,779
CA	Municipal Transit Operators Coalition, California	971,779
CA	Napa Transit Center construction, California	485,888
CA	Pacific Station Multimodal-Multiuse facility, California	1,457,667
CA	Palm Springs bus station relocation, California	29,154

## FEDERAL TRANSIT ADMINISTRATION

TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
CA	Palo Alto Intermodal Transit Center, California	728,834
CA	Riverbank vehicle garage renovation, California	121,472
CA	Riverside Transit Authority, California	121,472
CA	Roseville Multitranst Center, California	631,655
CA	Sacramento bus replacement/facility expansion, California	485,888
CA	SamTrans Zero Emission bus project, California	728,834
CA	San Francisco Muni buses and bus facilities, California	3,887,113
CA	San Luis Rey Transit Center, California	388,711
CA	Santa Clara VTA bus signal priority project, California	728,834
CA	SCAT CNG Fueling Station, California	485,888
CA	Sierra Madre Villa Gold Line Light Rail Station, California	971,779
CA	Solana Beach Intermodal Facility, Solana Beach, California	631,655
CA	Sonoma County CNG buses, California	291,534
CA	South Gate Clean Air buses, California	242,945
CA	Spring Valley Multi-Modal Center, California	777,422
CA	Sunline Transit Agency CNG buses, California	485,888
CA	Temecula Park and Ride Facility, California	48,589
CA	Temecula Transit Center, California	388,711
CA	Transit First Implementation, California	728,834
CA	Transit Oriented Neighborhood Program, California	194,357
CA	Union City Intermodal Station, Phase 1, California	485,888
CA	Vallejo Baylink Ferry Intermodal Center, California	1,214,724
CA	Visalia bus operations facility, California	242,945
CA	Visalia bus replacement, California	242,945
CA	Yosemite Area Regional Transportation System, California	388,711
CO	Colorado Statewide buses and bus facilities	6,923,920
CT	Bridgeport Intermodal Transportation Center, Connecticut	6,802,447
CT	Hartford bus facility rehabilitation, Connecticut	485,888
CT	Hartford/New Britain Busway, Connecticut	3,887,113
CT	Pulse Point Joint Development safety improvements, Connecticut	485,888
CT	Stamford Urban Transitway Phase II, Connecticut	5,830,669
CT	Waterbury bus maintenance facility, Connecticut	485,888
CT	West Haven/Orange Intermodal Facility, Connecticut	971,779
DC	Georgetown University Fuel Cell Transit Bus Program (TEA-21)	4,763,088
DC	Union Station Intermodal Transportation Center, Washington, DC	728,834
DE	Delaware Statewide buses and bus facilities	1,943,557
FL	Broward/Palm Beach County buses, Florida	728,834
FL	DeBary Intermodal Transportation Facility, Florida	242,945
FL	Flagler County buses and bus facilities, Florida	145,767
FL	Gainesville Regional Airport multi-modal facility, Florida	291,534
FL	Gainesville RTS buses and bus facilities, Florida	971,779
FL	Hillsborough Area Regional Transit (HART), Florida	485,888
FL	Homestead East-West bus connector, Florida	242,945
FL	Jacksonville JTA transit rolling stock, Florida	485,888
FL	Key West bus and bus facilities, Florida	1,943,557
FL	Lakeland Area Citrus Connection transit system, Florida	728,834
FL	Miami Beach Intermodal Greenway Transit Facility, Florida	680,245
FL	Miami Beach Intermodal Transit Facility, Florida	680,245
FL	Miami Intermodal Center, Florida	5,830,669
FL	Miami-Dade County bus procurement, Florida	485,888
FL	Miramar Parkway transit shelter enhancements, Florida	97,177
FL	National Center for Transportation Needs, Florida	583,067
FL	North Florida and West Coast Transit Coalition Bus Acquisition	3,887,113
FL	NW 7th Avenue Transit Hub, Florida	971,779
FL	Pinellas Suncoast Transit Authority, Florida	9,037,537
FL	Putnam County RideSolutions buses and bus facilities, Florida	1,457,667
FL	Sistrunk transit & pedestrian access improvement, Florida	971,779
FL	Southwest Broward bus facility, Florida	1,166,133
FL	St Johns County Council on Aging buses and bus facilities, Florida	728,834
FL	St. Lucie County bus purchase, Florida	388,711
FL	St. Petersburg intermodal facility, Florida	485,888
FL	TalTran Bus replacement project, Florida	777,422
FL	Trolley System, Boynton Beach, Florida	242,945

## FEDERAL TRANSIT ADMINISTRATION

TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION	
FL	Winter Haven Transit Terminal, Florida	485,888	
GA	Atlanta bus acquisition, Georgia	0	a/
GA	Atlanta clean fuel shuttle buses, Georgia	0	a/
GA	Atlantic Station, Georgia	1,068,956	
GA	Georgia Regional Transportation Authority (GRTA)	4,373,003	a/
GA	Hamilton clean fuels bus facility, Georgia	1,457,667	
GA	Macon Terminal Station, Georgia	728,834	
GA	MARTA Bus Acquisition Program, Georgia	1,457,667	
GA	MARTA clean fuel technology buses, Georgia	3,887,113	
GA	Moultrie Intermodal Facility, Georgia	485,888	
HI	Honolulu bus and paratransit replacement program, Hawaii	4,858,891	
HI	Honolulu Middle Street Intermodal Center, Hawaii	3,887,113	
HI	Pahoa/Hilo Bus routes, Hawaii	485,888	
HI	Rural Bus Program, Hawaii	4,858,891	
HI	Wahiawa Transit Center and Parking Facility, Hawaii	2,429,445	
IA	Ames transit/bus facility, Iowa	971,779	
IA	Des Moines MTA bus replacement, Iowa	1,943,557	
IA	Iowa Statewide buses and bus facilities	4,858,891	
IA	UNI multimodal project, Iowa	2,915,334	
ID	Idaho Transit Coalition Statewide buses and bus facilities	3,401,224	
IL	Illinois Statewide buses and bus facilities	-----	b/
IL	Downstate Illinois replacement buses	2,915,335	
IL	Bus facilities for Bloomington, Galesburg Macomb, Peoria, and Rock Island	1,457,668	
IL	Champaign Day Care Center/Park-n-Ride	728,834	
IL	Richton Park Metra Intermodal Transit Park and Ride Facility	485,889	
IL	City of Chicago's Free Trolley System	728,833	
IL	Downtown Normal Multimodal facility	485,888	
IL	Northern Winnebago County, Illinois	242,945	
IN	Bloomington Public Transit Corporation, Indiana	728,834	
IN	Cherry Street Multi-Modal Facility, Indiana	971,779	
IN	Citilink, Indiana	583,067	
IN	IndyGo buses and bus facilities, Indiana	2,915,334	
IN	Ivy Tech State College multimodal facility, Indiana	485,888	
IN	Lafayette City/Bus, Indiana	485,888	
IN	Muncie Indiana transit system, Indiana	971,779	
IN	TRANSPO Bus Operations Center South Bend, Indiana	1,943,557	
KS	I-35 Fixed Guideway Project, Johnson County, Kansas	291,534	
KS	Johnson County Transit System Buses, Kansas	485,888	
KS	Kansas City/Unified Govt. of Wyandotte Co. buses, Kansas	971,779	
KS	Kansas statewide bus and bus facilities	2,915,334	
KS	Lawrence Transit System maintenance facility, Kansas	388,711	
KS	Regional maintenance/paratransit scheduling facility, Kansas	777,422	
KS	Wichita Transit Authority buses and bus facilities, Kansas	242,945	
KY	Fixed Route Transportation System, Madison County, Kentucky	291,534	
KY	Fulton County Transit Authority, Kentucky	194,357	
KY	Henderson Area Rapid Transit Authority, Kentucky	77,742	
KY	Manchester, Clay County Intermodal Facility, Kentucky	1,943,557	
KY	Murray/Calloway County Transit Authority, Kentucky	1,749,201	
KY	Oakwood Intermodal Facility, Somerset, Kentucky	1,943,557	
KY	Paducah Area Transit Authority, Kentucky	1,263,313	
KY	Southern and Eastern Kentucky buses and bus facilities	2,915,334	
KY	Transit Authority of Northern Kentucky (TANK) bus and bus facilities, Kentucky	485,888	
KY	Transit Authority of River City, Louisville, Kentucky	584,524	
KY	University of Louisville bus shuttle program, Kentucky	2,429,445	
LA	Greater Ouachita Port and Intermodal Facility, Louisiana	2,915,334	
LA	Louisiana Statewide buses and bus facilities	4,858,891	
LA	ULM Intermodal Facility, Louisiana	728,834	
MA	Amesbury bus facility, Massachusetts	971,779	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
MA	Attleboro Intermodal Transportation Center, Massachusetts	1,943,557
MA	Brockton Area Transit Bus Replacement, Brockton, Massachusetts	1,943,557
MA	BRTA Bus Replacement Program, Massachusetts	1,049,521
MA	BRTA Bus Shelters, Massachusetts	145,767
MA	BRTA Storage Facility Upgrade, Massachusetts	237,114
MA	Cape Cod Regional Transit Authority Center/Bus Facility, Massachusetts	2,915,334
MA	Essex County buses, Massachusetts	145,767
MA	Lechmere Station intermodal, Massachusetts	971,779
MA	Lowell Regional Transit Authority, Massachusetts	874,601
MA	MART maintenance facility, Massachusetts	2,332,268
MA	PVTA bus replacement program, Massachusetts	3,887,113
MA	Salem Intermodal Center improvement project, Massachusetts	971,779
MA	Springfield Union Station, Springfield, Massachusetts	6,505,083
MA	UMass Transit RTIC and training facility, Massachusetts	3,887,113
MA	Wonderland Station improvements, Revere, Massachusetts	1,943,557
MD	Glenmont Metrorail parking garage expansion, Maryland	485,888
MD	Howard County Transit repair facility, Maryland	485,888
MD	Maryland Statewide buses and bus facilities	3,887,113
MD	Rockville Town Center transit project, Maryland	971,779
MD	Southern Maryland commuter bus initiative, Maryland	4,858,891
MD	WMATA clean fleet buses, Maryland	1,457,667
ME	Acadia National Park intermodal facility, Maine	242,945
ME	Maine statewide bus program	2,429,445
ME	Millinocket Airport transfer bus project, Maine	34,012
MI	Allegan County Transportation, Michigan	1,457,667
MI	Alma Transit facility and replacement buses, Michigan	485,888
MI	Ann Arbor Transit Authority (AATA) transit center, Michigan	971,779
MI	Barry County buses and bus facilities, Michigan	38,872
MI	Bay Area Transportation Authority, Traverse City, Michigan	3,887,113
MI	Belding buses and bus facilities, Michigan	48,589
MI	Berrien County transit, Michigan	97,177
MI	Blue Water Area Transportation Commission Maintenance and Storage Facility, Michigan	2,915,334
MI	Cadillac/Wexford Transit, Michigan	97,177
MI	Capital Area Transportation Authority, Lansing, Michigan	4,130,057
MI	Cass County transit, Michigan	38,872
MI	Clare County Transit Corporation, Michigan	97,177
MI	Clinton Area transit system, Michigan	1,214,724
MI	Detroit DOT bus replacement and facilities, Michigan	2,915,334
MI	Flint MTA Intelligent Transportation System, Michigan	971,779
MI	Greenville Transit System, Michigan	48,589
MI	Harbor Transit, Michigan	194,357
MI	Intelligent Transportation System for The Rapid, Michigan	583,067
MI	Ionia County Dial-A-Ride, Michigan	121,472
MI	Isabella County Transportation Commission, Michigan	291,534
MI	ITP/The Rapid replacement and expansion buses, Michigan	1,214,724
MI	Kalamazoo County Care A Van, Michigan	77,742
MI	Kalamazoo Metro Transit, Michigan	2,915,334
MI	Kalkaska Public Transit Authority, Michigan	48,589
MI	Lake Erie Transit maintenance garage expansion, Michigan	485,888
MI	Livingston Essential Transportation, Michigan	97,177
MI	Macatawa Area Express Facility, Michigan	971,779
MI	Mass Transportation Authority, Flint, Michigan	2,915,334
MI	Michigan Statewide buses and bus facilities	2,915,334
MI	Midland Dial-A-Ride, Michigan	121,472
MI	Muskegon Area Transit System, Michigan	485,888
MI	North Oakland Transit Authority, Michigan	77,742
MI	Northern Michigan bus and bus facilities	485,888
MI	Roscommon County Transit System, Michigan	48,589
MI	Shiawassee Area Transportation Authority, Michigan	43,730
MI	SMART buses and bus facilities, Michigan	2,915,334
MI	Twin Cities Area Transportation Authority, Benton Harbor, Michigan	29,154
MI	Van Buren Public Transit, Michigan	29,154
MI	Yates Township Dial-A-Ride Transportation System, Michigan	194,357
MN	Como Rider program, Minnesota	1,457,667

## FEDERAL TRANSIT ADMINISTRATION

TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION	
MN	Duluth Transfer Facility, Minnesota	971,779	
MN	Greater Minnesota Transit	3,133,984	
MN	Isanti Transit garage and operational facility, Minnesota	485,888	
MN	Metro Transit buses and bus facilities, Minnesota	3,887,113	
MN	Northwest Busway and facilities, Hennepin County, Minnesota	2,915,334	
MN	Union Depot Transportation Hub, Minnesota	971,779	
MN	White Earth Tribal Nation Transit Center and purchase of buses/White Earth Tribal Nation Transit Center, Minnesota	971,779	<i>c</i>
MO	Columbia Transit, Missouri	826,011	
MO	Franklin County Transportation Council, Missouri	145,767	
MO	KCATA bus rapid transit, Missouri	4,373,003	
MO	Metro St. Louis, Missouri	1,214,724	
MO	Missouri statewide bus and bus facilities	7,774,226	
MO	Southern Missouri buses and bus facilities	2,235,088	
MS	City of Jackson, Mississippi/JATRAN fixed route vehicles, Mississippi	2,915,334	<i>d/ e/</i>
MS	Harrison County HOV/Bus rapid transit Canal Road intermodal connector, Mississippi	1,943,557	
MS	Jackson State University busing project, Mississippi	291,534	
MS	Mississippi Valley State University mass transit program expansion, Mississippi	194,357	
MS	Vicksburg public transportation, Mississippi	485,888	
MT	Billings downtown bus facility, Montana	1,943,557	
MT	Billings public bus and medical transfer facility, Montana	2,429,445	
NC	Asheville City bus fleet replacement, North Carolina	291,534	
NC	Chapel Hill replacement buses, North Carolina	1,943,557	
NC	Charlotte Multi-modal Transportation Center, North Carolina	2,429,445	
NC	High Point Project Terminals, North Carolina	1,943,557	
NC	North Carolina Statewide buses and bus facilities	4,858,891	
NC	Triangle Transit Authority replacement buses, North Carolina	971,779	
ND	North Dakota Statewide buses and bus facilities	2,915,334	
NE	Kearney RYDE Transit, Nebraska	1,020,367	
NE	Nebraska Statewide bus and bus facilities	1,943,557	
NE	Omaha Metro Area Transit Center Developments, Nebraska	3,887,113	
NH	Commuter maintenance facility, New Hampshire	680,245	
	Park & Ride/Bus Facility Exit 2, Salem, New Hampshire	583,067	
	Park and Ride Bus Facility Exit 5, New Hampshire	194,357	
NJ	Bergen Intermodal Stations and Park N'Rides, New Jersey	1,943,557	
NJ	Englewood bus purchase, New Jersey	364,417	
NJ	Howard Boulevard Intermodal Station, New Jersey	3,401,224	
NJ	Multi County Intermodal Park & Ride, New Jersey	2,915,334	
NJ	Newark Penn Station Intermodal Improvements, New Jersey	4,858,891	
NJ	Park and Ride for the Edison Train Station, New Jersey	971,779	
NJ	South Amboy Intermodal Station, New Jersey	1,214,724	
NJ	Trenton Intermodal Center, New Jersey	1,943,557	
NM	City of Santa Fe, Bus and Bus Facility Grant, New Mexico	1,457,667	
NM	New Mexico Statewide bus and bus facilities	971,779	
NM	Rio Rancho Senior Transit Program, New Mexico	242,945	
NM	West Side transit facility, New Mexico	971,779	
NV	Bus Rapid Transit, Virginia Street Phase 1, Nevada	971,779	
NV	Intermodal terminals in Downtown Reno and Sparks, Nevada	1,457,667	
NV	Las Vegas buses, Nevada	971,779	
NY	Boro Park JCC bus purchase, New York	194,357	
NY	Brookhaven Town Senior Citizen Jitney Bus, New York	121,472	
NY	Broome County hybrid buses, New York	1,554,845	
NY	Bus Facility, 65th Street Intermodal Station, New York	7,288,337	
NY	Buffalo Niagra Medical Campus, New York	1,943,557	<i>f/</i>
NY	Central New York Regional Transportation Authority, New York	3,158,279	
NY	Fort Edward Intermodal Station, New York	291,534	
NY	Irvington Intermodal Upgrades, New York	242,945	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION	
NY	Jacobi Transportation Facility, New York	971,779	
NY	Jamaica Intermodal Facilities, New York	1,943,557	
NY	JCC of Coney Island Bus Purchase, New York	97,177	
NY	Nassau County Long Island Bus, New York	971,779	
NY	Niagara Frontier Transportation Authority Replacement Buses/BNMC replacement buses	736,608	g
NY	Pelham Intermodal Improvements, New York	485,888	
NY	Renaissance Square, New York	6,316,558	
NY	Rochester Central Bus Terminal, New York	5,441,959	
NY	Senior Bus Service Bus Replacement, North Hempstead, New York	291,534	
NY	St. George's Ferry Intermodal Terminal, New York	2,235,088	
NY	Suffolk County Transit buses and bus facilities, New York	971,779	
NY	Sullivan County buses and bus facilities, New York	485,888	
NY	Tompkins County Hybrid Buses, New York	242,945	
NY	Tuckahoe Intermodal Improvements, New York	38,872	
NY	Ulster County Hybrid Buses, New York	242,945	
NY	Westchester County Bee Line Bus Replacement, New York	3,887,113	
NY	White Plains Downtown Circulator, New York	242,945	
NY	Whitehall Intermodal Ferry Terminal, New York	971,779	
OH	Central Ohio Transit Authority Paratransit Facility	534,478	
OH	Central Ohio Transit Authority ITS Phase III	194,357	
OH	Cincinnati Local Community bus enhancements, Ohio	777,422	
OH	Cleveland Clinic Pedestrian Access Tunnel, Ohio	971,779	
OH	Cuyahoga County Plan for Senior Transportation, Ohio	971,779	
OH	East Side Transit Center, Ohio	485,888	
OH	New York Central Train Station, Elyria, Ohio	971,779	
OH	Ohio statewide buses and bus facilities	5,830,669	
OH	Paratransit District/Senior Call Center Brooklyn, Ohio	1,943,557	
OH	TARTA/TARPS Intermodal Facility, Ohio	1,457,667	
OK	Lawton buses and bus facilities, Oklahoma	201,158	
OK	Norman buses and bus facilities, Oklahoma	2,915,334	
OK	Northern Oklahoma regional multimodal facilities and transit system, Oklahoma	4,858,891	
OK	Oklahoma DOT Transit Program, Oklahoma	5,344,779	
OK	Oklahoma Transportation Center, Oklahoma	1,943,557	
OK	Tulsa transit buses and equipment/Tulsa Transit Multi-use facility in Tulsa, Oklahoma	1,943,557	h
OR	Lane County bus rapid transit vehicles, Oregon	3,887,113	
OR	Lewis and Clark explorer shuttle parking, Oregon	485,888	
OR	Maintenance facility modernization project, Oregon	2,429,445	i
OR	Salem-Keizer Transit, buses and bus facilities, Oregon	340,123	
OR	South Metro Area Rapid Transit park-and-ride facility and transit center, Oregon	485,888	
OR	TriMet buses, Portland, Oregon	971,779	
OR	Yamhill County Transit bus and bus facilities, Oregon	145,767	
PA	Altoona Bus Testing (TEA-21)	2,946,240	
PA	Amtran Bus Replacement, Altoona, Pennsylvania	291,534	
PA	Ardmore transit center, Pennsylvania	5,830,669	
PA	Area Transit Authority, Pennsylvania	1,384,784	
PA	Area Transportation Authority of North Central Pennsylvania passenger terminal, Penns	1,214,724	
PA	Berks Area Reading Transportation Authority (BARTA) facility, Pennsylvania	1,943,557	
PA	Bucks County Intermodal Facility Improvements, Pennsylvania	2,057,254	
PA	Cambria County Transit accessible buses, Pennsylvania	1,049,521	
PA	Cambria County Transit Facility rehabilitation, Pennsylvania	1,263,313	
PA	Capital Area Transit (CAT), Pennsylvania	971,779	
PA	Centre Area Transit Authority, Pennsylvania	826,011	
PA	City Bus, Williamsport Bureau of Transportation, Pennsylvania	1,457,667	
PA	County of Lebanon Transit Authority (COLT), Pennsylvania	349,841	
PA	Cruise Terminal Intermodal Facility, Pennsylvania	485,888	
PA	Endless Mountain Transportation Authority, Pennsylvania	97,177	
PA	Fayette Area Coordinated Transportation (FACT) buses and bus facilities, Pennsylvania	874,601	
PA	Harrisburg Transportation Center, Pennsylvania	971,779	
PA	Hazleton intermodal facility, Pennsylvania	2,915,334	
PA	Incline Plane Cable Replacement, Johnstown, Pennsylvania	116,614	
PA	Mid Mon Valley Transit Authority, Charleroi, Pennsylvania	1,360,489	
PA	Mid-County Transit Authority Kittanning, Pennsylvania	213,792	
PA	New Castle Area Transit, Pennsylvania	971,779	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
PA	Northumberland County Transportation, Pennsylvania	97,177
PA	SEPTA, Trackless Trolley Acquisition, Pennsylvania	971,779
PA	Union Station Intermodal Trade and Transit Center, Schuylkill County, Pennsylvania	1,943,557
PA	Union/Snyder Transportation Alliance, Union County, Pennsylvania	1,457,667
PA	Westmoreland County Transit Authority, Pennsylvania	485,888
PA	York County Transportation Authority buses, Pennsylvania	1,457,667
PR	Carolina Mini-Buses, Puerto Rico	1,846,378
RI	Elmwood Facility Expansion, Rhode Island	1,943,557
RI	Rhode Island Public Transit Authority Statewide buses and bus facilities	3,887,113
SC	Medical University of South Carolina	3,887,113
SC	South Carolina Statewide buses and bus facilities	3,887,113
SD	Sitting Bull College facilities, South Dakota	1,214,724
SD	South Dakota Statewide buses and bus facilities	971,779
TN	Downtown Centralized Intermodal Transfer Center, Nashville, Tennessee	971,779
TN	Knoxville Electric Transit Intermodal Center, Tennessee	1,943,557
TN	Memphis Airport Intermodal Facility, Tennessee	2,915,334
TN	Southeast Tennessee Human Resource Agency	728,834
TN	Tennessee Statewide buses and bus facilities	9,231,893
TX	Abilene bus and bus facilities, Texas	728,834
TX	Addicks Park & Ride Ramp, Texas	4,373,003
TX	Brazos Transit District passenger shelter program, Texas	485,888
TX	Bryan Intermodal Transit Terminal with Parking, Texas	388,711
TX	Bryan/College Station Bus Replacement Program, Texas	1,259,424
TX	Capital Metro North Operating Facility, Texas	1,166,133
TX	Capitol Metro buses and bus facilities, Texas	1,943,557
TX	Citibus vans and alternative fuel buses, Texas	1,749,201
TX	CNG bus replacement, Texas	388,711
TX	Corpus Christi buses and bus facilities, Texas	777,422
TX	Dallas bus shelters, Texas	728,834
TX	Denton Downtown multimodal transit facility, Texas	3,109,690
TX	El Paso buses, Texas	2,915,334
TX	Ft. Worth Transportation Authority Fleet Modernization, Texas	2,332,268
TX	Ft. Worth Transportation Authority Passenger Shelter Replacement, Texas	680,245
TX	Jefferson County Transit Facility Improvements, Texas	680,245
TX	Houston METRO, Park and Rides, Texas	9,717,782
TX	Hunt County Committee on Aging Transit Terminal, Texas	1,166,133
TX	Hunt County Committee on Aging Transit Vehicles, Texas	971,779
TX	Laredo Bus Hub and Maintenance Facility, Texas	1,943,557
TX	San Antonio VIA Metropolitan Transit Bus Fleet Modernization, Texas	2,915,334
TX	The Woodlands Capital Cost of Contracting Program, Texas	437,301
TX	Waco Transit Alternative Fueled Bus Purchase, Texas	3,887,113
UT	Transit ITS, Utah	242,945
UT	UTA intermodal facilities, Utah	1,943,557
UT	UTA Statewide buses and bus facilities	5,636,313
UT	West Valley City Intermodal Terminal, Utah	388,711
VA	Burke Centre VRE Station Parking Expansion	971,779
VA	Danville buses and bus facilities, Virginia	437,301
VA	Farmville buses and bus facilities, Virginia	194,357
VA	GRTC Bus Facility, Richmond, Virginia	5,830,669
VA	Hampton Roads Transit New Maintenance Facilities, Virginia	2,186,501
VA	I-66/Vienna Metrorail Accessibility Improvements, Virginia	583,067
VA	James City County natural gas buses, Virginia	2,915,334
VA	Petersburg Multi-Modal Transportation Center, Virginia	485,888
VA	Potomac Yard Transit Way, Virginia	777,422
VA	PRTC Bus Acquisitions, Virginia	777,422
VA	Richmond Highway Transit Improvements, Virginia	971,779
VA	Southside bus facility PE, Virginia	3,887,113
VA	WMATA bus purchase, Virginia	6,802,447
VT	Bellows Falls Transit Improvements, Vermont	1,943,557

## FEDERAL TRANSIT ADMINISTRATION

TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION	
VT	Vermont Statewide buses and bus facilities	1,943,557	
WA	Ben Franklin Transit Facility Improvements, Washington	1,020,367	
WA	Community Transit Bus and Van Replacement, Washington	971,779	
WA	Edmonds Crossing Multimodal Transportation Project, Washington	971,779	
WA	Grant Transit Authority vehicle replacement, Washington	777,422	
WA	Intercity Transit Buses, Thurston County, Washington	971,779	
WA	Jefferson Transit operations/maintenance facility, Washington	583,067	
WA	King County Metro Clean Air Buses, Washington	4,858,891	
WA	King County Metro, King County Airfield Transfer Area, Washington	1,943,557	
WA	King County Swedish Hospital parking garage and intermodal facility/King County Metro Park and Ride on First Hill, Seattle, Washington	1,943,557	e/ j/
WA	Kitsap Transit Bus Replacement, Washington	971,779	
WA	Link Transit Low Floor Coach Purchases, Washington	777,422	
WA	Pierce Transit Base expansion, Washington	971,779	
WA	Port Angeles International Gateway Center, Washington	971,779	k/
WA	Washington Small Bus System Program of Projects, Washington	-----	
WA	Clallam Transit	388,711	
WA	Columbia County Public Transportation (CCPT)	48,589	
WA	Garfield County	48,589	
WA	Grant Transit	388,711	
WA	Grays Harbor Transportation Authority	583,067	
WA	Island Transit	388,711	
WA	Jefferson Transit	728,834	
WA	Mason County Transportation Authority	388,711	
WA	Pacific Transit	48,589	
WA	Twin Transit	388,711	
WA	Valley Transit	485,890	
WA	Whatcom Transportation Authority, Lincoln Creek Transportation Center, Washington	1,943,557	
WI	Wisconsin Statewide buses and bus facilities	14,576,628	
WV	West Virginia Statewide	4,858,891	
<b>TOTAL ALLOCATION</b>		<b>\$712,008,000</b>	

a/ The Statement of the Managers accompanying the Fiscal year 2005 Appropriations Act includes \$3,500,000 for the Atlanta bus acquisition, and \$1,00,000 for the Atlanta clean fuel shuttle buses, Georgia. It is the intent of the conferees that the report should state "4,500,000 Georgia Regional Transportation Authority (GRTA)" (3/3/2005 Letter from Knollenberg/Shelby)

b/ The conferees provide \$7,000,000 to the Illinois Department of Transportation (IDOT) for Section 5309 Bus and Bus Facilities grants. The conferees expect IDOT to provide at least \$3,000,000 for Downstate Illinois replacement buses in Bloomington, Champaign-Urbana, Danville, Decatur, Peoria, Quincy, RIDES MTD, River Valley, Rockford, Rock Island, Springfield, and for the Bi-State Development/Metro Agency. Further, the conferees expect IDOT to provide appropriate funds for bus facilities in Bloomington, Galesburg, Macomb, Peoria, and Rock Island, including \$750,000 for the Champaign Day Care Center/Park-n-Ride; \$500,000 for the Richton Park Metra Intermodal Transit Park and Ride Facility; \$750,000 for the City of Chicago's Free Trolley system; and \$500,000 for the Downtown Normal Multimodal facility.

c/ The Statement of the Managers accompanying the Fiscal Year 2005 Appropriations Act includes \$1,000,000 for the White Earth Tribal Nation Transit Center in Minnesota. It is the intent of the conferees that a portion of these shall be available for the purchase of buses for the White Earth Nation. (5/25/05 Letter from Knollenberg/Bond)

d/ The Statement of the Managers accompanying the Fiscal Year 2005 Appropriations Act includes \$3,000,000 under Buses and Bus Facilities for JATRAM fixed route vehicles, Mississippi. It is the intent of the conferees that these funds be available to the City of Jackson, Mississippi, of which up to \$2,000,000 shall be available for pedestrian access to the Jackson intermodal facility, beautification to bridge structures, and brickwork. (5/25/05 Letter from Knollenberg/Bond)

e/ FTA can honor the conferees' intention that funds designated for this project be reprogrammed for the purposes outlined the 5/25/05 letter of clarification addressed to Secretary Mineta and signed by Senator Bond and Representative Knollenberg, but can only do so to the extent that the funds are expended on activities that meet the bus category criteria set forth in 49 U.S.C. 5309.

f/ The Statement of the Managers accompanying the Fiscal Year 2005 Appropriations Act Includes \$2,000,000 for Buffalo Niagara Medical Campus, New York. It is the intent of the conferees that these funds be available for infrastructure and streetscape improvements along Ellicott Street and surrounding streets at the hear of the Buffalo Niagara Medical Campus. (3/3/2005 Letter from Knollenberg/Shelby)

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 9

## REVISED FY 2005 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
g/	The Statement of the Managers accompanying the Fiscal Year 2005 Appropriations Act includes \$758,000 under Buses and Bus Facilities for BNMC replacement buses, New York. It is the intent of the conferees that these funds be available for Niagara Frontier Transportation Authority Replacement Buses, New York. (3/3/2005 Letter from Knollenberg/Shelby)	
h/	The Statement of the Managers accompanying the Fiscal Year 2005 Appropriations Act includes \$2,000,000 for the Tulsa Transit Multi-Use facility in Tulsa, Oklahoma. It is the intent of the conferees that these funds shall be available for transit buses and equipment in Tulsa. (5/25/05 Letter from Knollenberg/Bond)	
i/	It is the intent of the conferees that the designated recipient of funds in the Statement of the Managers accompanying the Fiscal Year 2005 Appropriations Act identified for "Maintenance facility modernization project, Oregon" should be Salem-Keizer Transit. (3/3/2005 Letter from Knollenberg/Shelby)	
j/	The Statement of Managers accompanying the Fiscal Years 2004 and 2005 Appropriations Acts provided a total of \$5,626,000 for the King County Metro Park and Ride on First Hill, Seattle, Washington. It is the intent of the conferees that these funds shall be available for the King County-Swedish Hospital parking garage and intermodal facility. (5/25/05 Letter from Knollenberg/Bond)	
k/	The Statement of the Managers accompanying the Fiscal Year 2005 Appropriations Act includes \$1,000,000 for the Port Angeles International Gateway Center, Washington. It is the intent of the conferees that these funds shall be used for the construction of a facility that will provide parking for transit patrons and the general public. (5/25/05 Letter from Knollenberg/Bond)	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
<i>FY 2003 Unobligated Allocations</i>		
AK	Anchorage Int'l Airport Intermodal Facility	\$1,967,357
AK	Anchorage ship creek intermodal facility (AK)	3,934,715
AK	Fairbanks Rail/Bus Transfer	1,967,357
AK	Port MacKenzie Intermodal Facility	1,967,357
AK	Seward Buses & Bus Facility	196,736
AK	Skagway Municipal and Regional Transit	344,287
AK	Wasilla Intermodal Facility	885,311
AL	Alabama A&M University bus & bus facilities	491,839
AL	Alabama State Docks Intermodal Facility	7,869,429
AL	Bevill State Community College Transit Project	295,104
AL	Cullman County Commission (CARTS)	147,552
AL	Hoover & Vestavia Hills Diesel Hybrid Electric Buses	983,679 a/ b/
AL	Huntsville Intermodal Center	2,951,036
AL	Jefferson County, Diesel Hybrid Electric Buses	737,759
AL	Troy State University Bus Shuttle Program	1,475,518
CA	Chino, Transcenter, Omnitrans	324,614
CA	City of Salinas - Intermodal Transportation Center	1,229,598
CA	City of Sierra Madre Buses and Natural Gas Vehicle Fueling Station	295,104
CA	El Garces Intermodal Station	1,524,702
CA	Fairfield/Suisun Transit Alternative Fueled Buses	491,839
CA	Folsom Railroad Block Project	983,679
CA	Foothill Transit - Bus Purchase	1,475,518
CA	Los Angeles to Pasadena Construction Authority Bus Program	2,951,036
CA	Modesto, Bus Maintenance Facility	1,672,254
CA	Monterey-Salinas Transit Bus Facility & Buses	875,785
CA	Omnitrans, City of Yucaipa - the Yucaipa Transit Advancement Project	934,495
CA	Redondo Beach, Bus Transfer Station	491,839
CA	Riverside Transit Agency (RTA) Transit Centers - Corona, Riverside	983,679
CA	Roseville Multitransit Center	1,475,518
CA	San Diego Bus Rapid Transit	491,839
CA	San Fernando Valley East and Ventura Boulevard, Park and ride facilities	491,839
CA	Solano Transportation Authority - Fairfield/Vacaville Intermodal Station	491,839
CA	South Pasadena Circulator Bus	147,552
CA	Sun Line Transit Hydrogen Refueling Station	1,229,598
CT	Bridgeport High Speed Ferry Terminal Project	983,679
CT	Hartford Downtown Circulator	1,475,518
CT	Hartford-New Britain Busway Project	7,377,590
CT	Hollyhock Station/Intermodal Transportation Center, Norwich	2,606,748
CT	New Haven, Bus Maintenance Facility	983,679
CT	New Haven, Fuel Cell and Electric Bus Project	----- c/
CT	West Haven Intermodal	983,679
DC	WMATA - Buses in D.C., Maryland, and Virginia	1,967,357
DE	Delaware Transit Corporation	2,951,036
FL	Broward County Buses and Bus Facility	196,736
FL	Collier Area Transit, Transit Facility	737,759
FL	DeLand Intermodal Center (VOTRAN)	1,551,438
FL	Ft. Lauderdale, Transit Shuttle Vehicles	1,475,518
FL	Gainesville, Multimodal Transportation Center	923,679
FL	Hillsborough Area Regional Transit (HART)	72,000
FL	Jacksonville Transit Authority (JTA) - Buses	1,229,598
FL	Key West Buses and Bus Facilities	983,679
FL	Lakeland, Citrus Connection	491,839

## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS		
STATE	PROJECT	ALLOCATION
FL	Lee County, Bus Facility	737,759
FL	Miami Beach Intermodal Transit Center	1,475,518
FL	Tallahassee (TALTRAN) Intermodal Center	491,839
FL	West Coast Florida Bus Coalition	1,809,969
GA	Atlanta, Multimodal Terminal	1,967,357
GA	Chatham Area Transit	2,655,932
GA	Macon Intermodal Center	1,967,357
HI	Bus and bus facilities, City and County of Honolulu/BRT Systems, Appurtenances & Facilities	7,869,429
HI	Bus Transit Centers - Waianae, Miiilani, Wahiawa	737,759
HI	Hawaii Statewide Bus and Bus Facilities	4,918,393
IA	Cedar Falls Multimodal Facility	1,082,046
ID	Idaho Transit Coalition Bus and Bus Facilities	762,084
IL	Illinois Statewide Buses and Facilities	3,160,000
IL	Rock Island Bus and Bus Facilities	600,000
IN	Cherry Street Multimodal Facility	491,839
IN	Indianapolis Downtown Transit Facility	4,426,554
IN	Wabash Landing Transit Bus and Bus Facility	145,920
KS	City of Wichita, Mini-Transfer Station	393,471
KS	Kansas, Buses and Bus Facilities	2,951,036
KS	Lawrence Transit System Transfer Center	491,839
KS	Wichita Transit Authority	1,180,414
KY	Henderson County Facility	491,839
KY	KY Statewide, Bus and Bus Facilities	3,000,000
KY	KY Transportation Cabinet - Community Action groups	108,000
KY	Laurel County intermodal facility	4,918,393
KY	Transit Authority of Northern Kentucky (TANK)	1,475,518
KY	Transit Authority of River City	1,967,357
LA	LA Public Transit Association, Buses and Bus Facilities	3,052,861
LA	LSU Health Sciences Center Shreveport Intermodal Facility	245,920
MA	Attleboro Intermodal Mixed-Use Garage Facility	737,759
MA	Cape Cod Intermodal Facilities (Cape & Island Transit Ctrs)	295,104
MA	Essex County, City of Lynn, MA, buses and senior citizen vans	137,715
MA	Essex County, City of Peabody, MA, buses	47,217
MA	Essex County, Town of Danvers, MA, buses and senior citizen vans	64,923
MA	Northern Tier Intermodal Center - Athol	295,104
MA	Springfield Union Station Intermodal Redevelopment Project	5,902,072
MA	Worcester Regional Transit Authority (WRTA) Maintenance Facility	196,736
MD	Maryland Statewide Bus and Bus Facilities	7,149,141
MD	Montgomery County FDA Transit Center	245,920
ME	Oceangateway Development Project	491,839
ME	State of Maine, statewide buses	983,679
MI	Ann Arbor Transportation Authority Bus & Bus Facilities	245,920
MI	Blue Water Area Transportation	983,679
MN	Dakota County, Cedar Avenue Project	983,679
MN	Duluth Transit Authority Bus and Bus Facilities	491,839
MN	La Crescent - Public Transfer Hub	59,021
MN	Minneapolis downtown circulator	1,967,357
MN	Minneapolis, 63rd Ave N. Park and Ride	983,679
MN	Northwest Corridor Busway	2,459,197
MO	Missouri Statewide Bus and Bus Facility Projects	100,000
MS	Brookhaven, Multi-modal Center	1,967,357
MT	Billings bus and bus facilities	983,679
MT	District IX - Bozeman Galavan	245,920

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## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
MT	Mountain Line Buses Missoula	443,839
NC	North Carolina Bus and Bus Facilities	6,697,217
NC	Piedmont Authority for Regional Transportation (PART) - Bus Purchase	983,671
NC	Triangle Transit Authority (TTA) Maintenance Facility	344,288
ND	North Dakota Statewide Capital Transit	1,890,732
NE	Metro Area Transit - Intermodal Facility	983,679
NE	Metro Area Transit South Omaha/Stockyard Center	737,759
NH	New Hampshire Statewide Bus Acquisition	737,759
NJ	Central New Jersey Raritan Valley Line Park-n-Ride	983,679
NJ	Gloucester Co Sr. Buses	196,736
NJ	Harrison New Jersey PATH Station Rehabilitation	245,920
NJ	Morris County, Intermodal Park-n-Rides Facilities	1,475,518
NJ	Newark Penn Station Intermodal Access Enhancements	1,967,357
NM	Espanola ADA van & Compressed Gas Equipment	73,776
NM	Rio Rancho Buses and Facilities	245,920
NV	Bus Rapid Transit Project Las Vegas Blvd	4,918,393
NV	Las Vegas Downtown Transportation Center	2,213,277
NV	Regional Transportation Commission (RTC) BRT - North Las Vegas CIVIS Bus Stops	319,696
NY	Albany, NY - Capital District Transportation Authority (CDTA), Bus and Bus Facilities	2,655,932
NY	Brooklyn, downtown intermodal transit district	491,839
NY	Broome County, Binghamton Intermodal Terminal	983,679
NY	Buffalo, New York Inner Harbor Redevelopment Project/Buffalo Intermodal Transportation Center	4,918,393
NY	City of Schenectady, bus and bus facilities	491,839
NY	Jamaica Intermodal Facilities	1,475,518
NY	Lower Hudson Intercounty Bus Program	786,943
NY	Mobile Health Service Buses, NYC	491,839
NY	Rochester-Genesee Regional Transportation Authority (RGRTA) - Rochester Central Station	2,951,036
NY	Oneida County buses and transit items/Utica Transit Authority Buses	885,311
OH	Lorain Renovation Train Depot in a Multi-modal Hub	983,679
OH	Ohio Public Transportation Association - Bus and Bus Facilities for the State of Ohio	702,515
OK	Central Oklahoma Transportation & Parking Authority (COPTA)	1,909,197
OK	Oklahoma Transit Association - Bus and Bus Facilities	960,000
OK	OSU Multimodal Transportation Facility	2,951,036
OR	Eugene Lane Transit District	1,967,357
PA	Allentown Intermodal Transportation Center	1,462,372
PA	Altoona Metro Transit Buses	491,839
PA	AMTRAN Bus and Transit System Improvements	737,759
PA	Bucks County, SEPTA Intermodal facility improvement	983,679
PA	Butler Township/City Joint Municipal Transit Multi-Modal Transfer Center	418,063
PA	Easton Intermodal Terminal	1,967,357
PA	Mid-County Transit Authority, Facilities and Equipment	491,839
PA	Port Authority of Allegheny County Buses (including clean fuels)	1,746,030
PA	Pullman Multi-modal Center	491,839
PA	SEPTA - Paratransit Vehicles	491,839
PA	Westmoreland County Transit Authority	154,334
PA	Wilkes-Barre Intermodal Facility	245,920
SC	Intermodal/Inland Port Terminal	983,679
SC	Myrtle Beach Regional Multimodal Transit Center	1,106,638
SC	North Charleston Regional Intermodal Transportation Center	491,839
SC	South Carolina Vehicles and Facilities	720,000
SD	South Dakota Statewide - Bus and Bus Facilities	10,011
TN	Knoxville Electric Transit Intermodal Center	3,344,507
TN	Tennessee Bus Replacements & Bus Facilities	114,865

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## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION	
TX	Beaumont Buses	98,368	
TX	Corpus Christi Regional Transportation Authority (RTA) Bus & Bus Facilities	491,839	
TX	Galveston Buses	363,233	
TX	Laredo, Administrative/Operations/ Maintenance Facility	1,721,438	
TX	Odessa & Midland, TX - Alternative Fuel Buses	983,679	
VA	Arlington Bus Transfer Stations	491,839	
VA	Potomac Yard Transitway	786,943	
VT	Montpelier Multimodal Center	1,967,357	
VT	St. Johnsbury Transit Center Rehabilitation	245,920	
VT	Winooski Falls Downtown Multimodal Transportation Center	491,839	
WA	Aurora Avenue Bus Rapid Transit	1,475,518	
WA	Burien transit center transit oriented development	1,967,357	
WA	Edmonds Crossing multi-modal project	3,442,875	
WA	Issaquah Highlands Park & Ride	1,377,150	
WA	Jefferson Transit Facilities	423,679	
WA	King Street Station Multimodal Facility	245,920	
WA	Mercer Island Transit Center, Park and Ride	291,839	
WA	Snohomish County Community Transit park and ride	2,951,036	
WA	Sound Transit regional transit hubs	136,745	
WA	Spokane bus and bus facilities	2,459,197	
WA	WA C-TRAN Vancouver Bus and Bus Transit Center/Clark County, WA C-TRAN Vancouver Mall Transit Center	2,557,565	h/
WV	Huntington, Tri-State Transit Authority (TTA) buses and vans	1,770,622	
WV	Monongalia Courthouse Annex in Morgantown - Intermodal Parking Facility	3,442,875	
WY	Wyoming Department of Transportation	1,997,204	
	<b>Subtotal FY 2003 Unobligated Allocations</b>	<b>\$255,065,609</b>	
<b>FY 2004 Unobligated Allocations</b>			
AK	Alaska Mobility Coalition Bus Replacement	\$485,437	
AK	Anchorage Ship Creek Intermodal Facility, Alaska	1,941,747	
AK	Arctic Winter Games buses and bus facilities, Alaska	1,456,311	
AK	Coffman-Cove Inner Island Ferry/Bus Terminal, Alaska	590,225	
AK	Girdwood Transportation Center, Alaska	970,874	
AK	Port McKenzie Intermodal Facility, Alaska	970,874	
AK	Port of Anchorage Intermodal Facility, Alaska	2,912,620	
AK	Sawmill Creek Intermodal Facility, Alaska	1,941,747	
AL	Alabama A&M University Transit Loop, Alabama	1,456,311	
AL	Alabama State Docks Intermodal Facility	9,223,299	
AL	Birmingham Downtown Intermodal Facility phase II, Alabama	3,398,058	
AL	Cummings Research Park Commercial Center Intermodal Facility, Alabama	1,941,747	
AL	Huntsville Airport Phase III Intermodal Facility, Alabama	3,398,058	
AL	Mobile Waterfront Terminal and Maritime Center of the Gulf, Alabama	4,368,931	
AL	Northwest Shoals Community College Transportation Modernization, Alabama	436,894	
AL	Orange Beach Senior Activity Center buses, Alabama	97,088	
AL	Troy State University Bus Shuttle Program, Troy, Alabama	1,456,311	
AR	Arkansas Statewide buses and bus facilities	4,611,649	
AR	Southeast Arkansas Area Agencies on Aging buses and bus facilities, Arkansas	310,680	
AZ	Alternative Fuel Replacement Buses for Sun Tran, Arizona	485,437	
AZ	Mesa Operating Facility, Arizona	1,941,747	
AZ	Phoenix/Glendale West Valley Operating Facility, Arizona	4,854,368	
AZ	Phoenix/Regional Heavy Maintenance Facility, Arizona	970,874	
AZ	Ronstadt Transit Center Modifications, Arizona	2,912,620	
AZ	Tempe Downtown Transit Center, Arizona	485,437	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION	
AZ	Tempe/Scottsdale East Valley Facilities, Arizona	3,883,494	
AZ	Tucson Alternative Fuel Replacement Buses, Arizona	3,495,144	
CA	AC Transit Rapid Bus Improvements, California/AC Transit Expansion Buses, California	234,374	i/
CA	Access Enhancements to Sierra Madre Villa Gold Line Station, California	582,524	
CA	Fairfield/Vacaville Intermodal Transit Station, California / Alameda Point Areil Transit Project, California	485,437	b/ j/
CA	Anaheim Resort Transit (ART), California	485,437	
CA	Antelope Valley Transit Authority Operations and Maintenance Facility, California	1,213,592	
CA	Baldwin Park Downtown/Metrolink Parking Improvements, California	242,718	
CA	Burbank Empire Area Transit Center, California	728,156	
CA	Calexico Transit System, California	291,262	
CA	Cerone Operating Complex Improvements, California	121,360	
CA	Cerritos Circulator Buses, California	291,262	
CA	Claremont Intermodal Transit Village Expansion Project, California	1,213,592	
CA	Collegian Busway Improvements, California	194,174	
CA	Corona Transit Center, California	679,612	
CA	Davis, California intermodal parking structure/Davis Intermodal Facility, California	194,174	k/ l/
CA	Eastern Contra Costa County Park and Ride Lots, California	582,524	
CA	Ed Roberts Campus transit center, California	93,672	
CA	El Garces Intermodal Station, Needles, California	1,844,660	
CA	Escondido Bus Maintenance Facility, California	485,437	
CA	Eureka Intermodal Depot, California	242,718	
CA	Foothill Transit Transit Oriented Neighborhood Program, California	2,427,184	
CA	Fresno FAX Buses, Equipment, and Facilities, California	1,165,048	
CA	Golden Empire Transit Traffic Signal Priority, California	242,718	
CA	Hemet Transit Center/Bus Facility, California	302,912	
CA	Interstate 15 Managed Lanes BRT Capital Purchase, California	970,874	
CA	Long Beach Transit buses and bus facilities, California	970,874	
CA	Los Angeles MTA buses, California	3,883,494	
CA	Mammoth Lakes Bus Purchase, California	776,699	
CA	Modesto Bus Facility, California	970,874	
CA	Monterey-Salinas Transit Buses, California	1,456,311	
CA	Omnitrans - Paratransit Vehicles, California	291,262	
CA	Orange County Transit Center Improvements, California	315,534	
CA	Orange County Bus Rapid Transit, California	2,184,466	
CA	Orange County Fare Collection System, California	970,874	
CA	Orange County Inter-County Express Bus Service, California	1,067,961	
CA	Palmdale Intermodal Facility Parking Lot Expansion, California	291,262	
CA	Palo Alto Intermodal Transit Center, California	182,039	
CA	Redondo Beach Catalina Transit Terminal, California	776,699	
CA	Reseda Boulevard Bus Rapid Transit Project Capital Improvement, California	242,718	
CA	Riverside Transit Agency, Automatic Traveler Information System (ATIS), California	72,815	
CA	Riverside Transit Agency, Bus Rapid Transit Investment, California	485,437	
CA	Riverside Transit Agency, Transit Center, California	970,874	
CA	Roseville Multitransit Center, California	485,437	
CA	Sacramento Regional Bus Expansion, Enhancement, and Coordination Program, City of Auburn, California	97,088	
CA	Sacramento Regional Bus Expansion, Enhancement, and Coordination Program, City of Lincoln, California	485,437	
CA	Sacramento Regional Transit District, Bus Maintenance Facility, California	485,437	
CA	San Fernando Local Transit System, California	291,262	
CA	San Joaquin RTD buses and bus facilities, California	242,718	
CA	San Mateo County Transit District Zero-Emission buses, California	230,582	
CA	Santa Barbara Metropolitan Transit District Electric Bus Investment, California	291,262	b/ m/
CA	Santa Clara Valley Transportation Authority Zero-Emission Buses, California	60,680	
CA	Sonoma County Transit CNG Buses, California	485,437	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION	
CA	South San Fernando Valley Park and Ride facility expansion, California	291,262	
CA	South Whittier Circulator Buses, California	388,350	n/
CA	Spring Valley Multi-Modal Center, California	582,524	
CA	SunLine Transit Agency Clean Fuels Mall Facility and Hydrogen Infrastructure Expansion, California	436,894	
CA	Temecula Transit Center, California	776,699	
CA	Transit First Implementation, Chula Vista, California	388,350	
CA	Truckee Replacement Buses, California	72,815	
CA	Ventura County CNG Fueling Station and Facility Pavement Replacement, California	388,350	
CA	Visalia Bus Operations and Maintenance Facility, California	970,874	
CO	Colorado Transit Coalition buses and bus facilities, Colorado	9,862,062	
CT	Bridgeport Intermodal Transport Center, Connecticut	3,883,494	
CT	Connecticut Statewide buses and bus facilities	2,912,620	
CT	East Haddam Mobility Improvement Project, Connecticut	2,912,620	o/
CT	Greater New Haven Transit District Fuel Cell and Electric Bus Funding, Connecticut	-----	p/
CT	Hartford Downtown Circulator, Connecticut	1,334,951	
DC	Georgetown University Fuel Cell Transit Bus Program (TEA-21)	4,788,842	
DC	WMATA Bus Fleet, Washington, DC	728,156	
DE	Delaware Statewide bus and bus facilities	970,874	
DE	University of Delaware Fuel Cell Bus Project, Delaware	1,699,029	
FL	Citrus County Enhancement Project for the Transportation Disadvantaged, Florida	121,359	
FL	Flagler Senior Services Transit Coaches, Florida	121,359	
FL	Florida International University/University of Miami University Transportation Center, Florida	388,350	
FL	Fort Lauderdale Tri-County Transit Authority fare collection system, Florida	776,699	
FL	HART Bus Purchase, Florida	485,437	
FL	Jacksonville Transportation Authority, Bus and Bus Facilities, Florida	970,874	
FL	Key West bus and bus facilities, Florida	1,067,961	
FL	Lakeland Area Mass Transit District Citrus Connection, Florida	533,980	
FL	Lee County LeeTran Bus Replacement, Florida	194,174	
FL	Levy County Improvement Project for the Transportation Disadvantaged, Florida	194,174	
FL	Miami Dade County System Enhancements, Florida	970,874	
FL	Miami-Dade County buses, Florida	970,874	
FL	North Florida and West Coast Bus Procurement, Florida	3,883,494	q/
FL	NW 7th Avenue Transit HUB Improvements, Florida	970,874	
FL	Palm Beach County and Broward County Regional Buses, Florida	725,287	
FL	Palm Beach Gardens Mass Transit Bus Shelters, Florida	19,418	
FL	Putnam County Transit Coaches for Ride Solutions, Florida	1,165,048	
FL	St. Augustine Intermodal Transportation and Parking Facility, Florida	533,980	
FL	St. Johns County Council on Aging Administrative Facility, Florida	194,174	
FL	St. Johns County Council on Aging Passenger Amenities, Florida	38,834	
FL	St. Johns County Council on Aging Transit Coaches, Florida	339,806	
FL	TalTran buses and bus facilities, Florida	679,612	
FL	TalTran Intermodal Facility, Florida	485,437	
FL	Winter Haven Transit Terminal, Florida	339,806	
GA	Athens Clarke County Park Ride Project, Georgia	2,669,902	
GA	Chatham Area Transit Authority buses and bus facilities, Georgia	5,825,241	
GA	City of Macon Alternative Fuel Vehicle Purchase, Georgia	291,262	
GA	Dekalb County BRT Improvements, Georgia	1,456,311	
GA	Georgia Statewide buses and bus facilities, Albany & Rome	970,874	
GA	GRTA buses and bus facilities, Georgia	4,854,368	
GA	Hamilton Clean Fuels Bus Facility, Georgia	970,874	
GA	Leesburg Train Depot Renovation and Restoration, Georgia	291,262	
GA	Macon and Athens Multimodal Station, Georgia	1,553,398	
GA	Macon Multi-Modal Terminal Station, Georgia	1,456,311	

## FEDERAL TRANSIT ADMINISTRATION

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## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
GA	MARTA Automated Fare Collection/Smart Card System, Georgia	3,883,494
GA	Regional Transit Project for Quitman, Clay, Randolph and Stewart Counties, Georgia	485,437
GA	Terminal Station Multi-Modal Roof Rehabilitation, Georgia	328,156
HI	Hawaii Statewide Rural Bus Program	936,715
HI	Honolulu Bus and Paratransit Replacement Program, Hawaii	9,708,736
HI	Honolulu Middle Street Intermodal Center, Hawaii	2,912,620
IA	Ames Maintenance Facility improvement, Iowa	396,550
IA	Coralville Intermodal Facility, Iowa	485,437
IA	UNI Multimodal Project, Iowa	3,398,058
ID	Idaho Transit Coalition buses and bus facilities	2,970,213
IL	Illinois Statewide buses and bus facilities	5,552,760
IL	Peoria Bus Purchase, Illinois	291,262
IL	Rock Island County Mass Transit District (Metrolink) transit facility, Illinois	485,437
IL	Springfield Bus Purchase, Illinois	291,262
IN	Cherry Street Multi-Modal Facility, Terre Haute, Indiana	1,844,660
IN	Fort Wayne Citilink Bus Purchase, Indiana	159,620
IN	Indiana University Bloomington, Indiana	5,000
IN	Indianapolis Downtown Transit Center, Indiana	3,398,058
IN	Muncie Transit System, Indiana	679,612
IN	South Bend TRANSPO Bus Facilities, Indiana	970,874
KS	City of Wichita Transit Authority System Upgrades, Kansas	242,718
KS	Johnson County Nolte Transit Center, Kansas	58,343
KS	Johnson County Transit Equipment and Transit Coach Improvement, Kansas	23,338
KS	Kansas City Area Transit Authority buses and bus facilities, Kansas	674,134
KS	Kansas Statewide buses and bus facilities	2,912,620
KS	Topeka Transit buses and bus facilities, Kansas	179,205
KS	Unified Government of Kansas City bus replacement, Kansas	339,806
KY	Audubon Area Community Services, Kentucky	97,088
KY	Danville Hub-Gilcher Transit Facility / Parking Structure, Kentucky	1,699,029
KY	Daviess County Parking Garage and Intra-County Transit Facility, Kentucky	1,941,747
KY	Fulton County Transit Authority, Kentucky	145,632
KY	Henderson Area Rapid Transit Authority, Kentucky	14,564
KY	Kentucky Transportation Cabinet/Community Action Groups	388,350
KY	Paducah Area Transit Authority, Kentucky	38,834
KY	Perry County Intermodal Facility, Kentucky	1,941,747
KY	Red Cross Wheels, Kentucky	77,670
KY	Senior Services of Northern Kentucky buses and bus facilities, Kentucky	242,718
KY	Southern and Eastern Kentucky buses and bus facilities	1,504,854
KY	Transit Authority of River City buses and bus facilities, Kentucky	2,427,184
KY	Transportation Authority of the River City (TARC) bus/trolley replacement, Kentucky	583,438
KY	Transportation Authority of the River City (TARC) expansion facility, Kentucky	776,699
KY	Western Kentucky University Bus Shuttle System, Kentucky	2,427,184
LA	Greater Ouachita Port and Intermodal Facility, Louisiana	1,213,592
LA	Intermodal Transit Facility for ULM, Louisiana	970,874
LA	Louisiana Statewide buses and bus facilities	4,607,938
LA	Shreveport Intermodal Bus Facility, Louisiana	679,612
LA	St. Bernard Parish Intermodal Facilities, Louisiana	485,437
LA	St. Tammany Park and Ride, Louisiana	388,350
MA	Berkshire Regional Transit Authority (BRTA) Buses and Fare Boxes, Massachusetts	160,194
MA	Franklin Regional Transit Authority (FRTA) Bus, Massachusetts	145,632
MA	Montachusett Area Regional Transit (MART) buses and bus facilities, Massachusetts	377,227
MA	Newton Rapid Transit Handicap Access Improvements, Massachusetts	291,262
MA	Pioneer Valley Transit Authority (PVRTA) buses, Massachusetts	2,330,096

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## FEDERAL TRANSIT ADMINISTRATION

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REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS		
STATE	PROJECT	ALLOCATION
MA	Pittsfield Intermodal Transportation Center, Massachusetts	597,088
MA	Springfield Union Station Intermodal facility redevelopment, Massachusetts	4,368,931
MD	Maryland Statewide buses and bus facility	7,281,551
MD	Southern Maryland Commuter Bus Initiative	4,368,931
MD	WMATA Buses, Maryland	582,524
ME	Cranberry Isles Intermodal Transportation Facility, Maine	242,718
ME	Curtis Ferry, Maine	728,156
ME	Maine Statewide buses and bus facilities	1,213,592
ME	Portland Bayside Parking Garage / Intermodal Facility, Maine	242,718
MI	Allegan County Transportation Services, Michigan	38,834
MI	Ann Arbor Fuel Cell Bus Project, Michigan	1,941,747
MI	Ann Arbor Transit Authority Transit Center, Michigan	728,156
MI	Barry County Transit replacement maintenance equipment, Michigan	19,418
MI	Bay Area Metropolitan Transportation Authority New and Replacement Buses, Michigan	242,718
MI	Bay Area Transportation Authority Downtown Transfer Center Construction and Bus Purchase, Grand Traverse	400,134
MI	Belding bus replacement and communication equipment, Michigan	38,834
MI	Berrien County Public Transportation, Michigan	97,088
MI	Cadillac/Wexford Transit Authority buses, Michigan	72,815
MI	Cadillac/Wexford Transit Authority Intermodal Facility, Michigan	582,524
MI	Clare County Transit Corporation Replacement Buses, Michigan	97,088
MI	Clinton Transit Bus Purchase, Michigan	38,834
MI	County Connection L.L.C., Midland County, Michigan	72,815
MI	Detroit Timed Transfer Center Phase II, Michigan	970,874
MI	Harbor Transit Bus Replacement, Michigan	194,174
MI	Holland Macatawa Area Express (MAX), Michigan	582,524
MI	Intelligent Transportation System for ITP The Rapid, Michigan	582,524
MI	Isabella County Transportation Commission Vehicle Replacement, Michigan	242,718
MI	LETS Bus Replacement, Michigan	87,378
MI	Ludinton Mass Transportation Authority Bus Facility, Michigan	242,718
MI	Manistee County Transportation, Inc. Replacement Buses, Michigan	29,126
MI	Marquette County, Phase II - Transit Administrative, Operations, Maintenance & Storage Facility, Michigan	970,874
MI	Mecosta Osceola County Area Transit Vehicle Replacement, Michigan	194,174
MI	Michigan Statewide buses and bus facilities	970,874
MI	Northern Michigan buses and bus facilities	485,437
MI	Sanilac County bus facility, Michigan	97,088
MI	Shiawassee Transportation Center and replacement buses, Michigan	38,834
MI	St. Joseph County Transit, Michigan	33,980
MI	VanBuren Public Transit, Michigan	17,476
MN	Metro Transit buses and bus facilities, Minnesota	4,271,844
MN	Minnesota District 8 Transit Vehicles and Transit Bus Facilities	776,699
MN	Minnesota Transit buses and bus facilities, Minnesota	1,138,903
MN	Northwest Corridor Busway, Minnesota	2,912,620
MN	Southern Minnesota Transit Facilities	29,126
MN	St. Cloud Buses, Minnesota	97,088
MN	Union Depot Multi-modal Transportation Hub, Minnesota	728,156
MO	Clinton Transit Office, Missouri	242,718
MO	KCATA buses and bus facilities, Missouri	1,189,648
MO	Missouri Statewide buses and bus facilities	3,571,342
MO	Southeast Missouri Bus Service Capital Improvements	97,068
MS	Harrison County multi-modal facilities and shuttle service, Mississippi	430,874
MS	Hattiesburg Intermodal Facility, Mississippi	1,180,448
MS	Intermodal Facility, JIA, Mississippi	1,941,747
MS	JATRAM vehicles for disabled and elderly, Mississippi	242,718

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## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS		
STATE	PROJECT	ALLOCATION
MT	Billings Downtown Bus Transfer Facility, Montana	1,456,311
MT	Great Falls Transit District bus and bus facilities/Great Falls Transit Authority Bus Replacement and Facility Improvement, Montana	291,262
MT	Helena Transit Facility, Montana	485,437
MT	Liberty County COA Bus Facility, Montana	48,544
MT	Mountain Line Bus Replacement and Facility Improvements, Montana	194,174
NC	Asheville Transit System Fleet Replacement, North Carolina	291,262
NC	Chapel Hill Bus Maintenance Facility, North Carolina	970,874
NC	Charlotte Area Transit System Transit Maintenance and Operations Center, North Carolina	4,854,368
NC	Durham Multimodal Transportation Facility, North Carolina	1,456,311
NC	High Point Project Terminals, North Carolina	776,699
NC	Intermodal Transportation Hub Project, North Carolina	145,632
NC	North Carolina Statewide buses and bus facilities	6,067,961
NC	Piedmont Authority for Regional Transportation (PART) multimodal transportation center, North Carolina	1,067,961
NC	Winston-Salem Union Station, North Carolina	1,262,136
ND	North Dakota Statewide buses and bus facilities	2,912,620
ND	Small Urban and Rural Transit Center, North Dakota	388,350
NE	Kearney RYDE Transit, Nebraska	970,874
NE	Metro Area Transit (MAT) buses and bus facilities, Omaha, Nebraska	1,941,747
NE	Nebraska Statewide Rural Automatic Vehicle Locating & Comms. System	728,156
NH	New Hampshire Statewide buses and bus facilities	4,368,931
NJ	Harrison Intermodal Project, New Jersey	728,156
NJ	Howard Boulevard Intermodal Park & Ride, New Jersey	2,135,923
NJ	Hunterdon County Intermodal Stations and Park & Rides, New Jersey	388,350
NJ	Montclair State University Campus and Community Bus System, New Jersey	679,612
NJ	Morris County Intermodal Facilities and Park & Rides, New Jersey	2,912,620
NJ	Newark Penn Station Intermodal Improvements, New Jersey	2,912,620
NJ	Old Bridge Intermodal Stations and Park & Rides, New Jersey	485,437
NJ	South Amboy Regional Intermodal Transportation Initiative, New Jersey	970,874
NJ	Trenton Intermodal Station, New Jersey	728,156
NM	Farmington buses and bus facilities, New Mexico	97,088
NM	Las Cruces buses and bus facilities, New Mexico	364,077
NV	Bus Rapid Transit Project, Virginia Street, Reno, Nevada	396,550
NV	Construction of new Intermodal Terminals in Downtown Reno and Sparks, Nevada	2,381,449
NV	Nevada Rural Transit Vehicles and Facilities	485,437
NV	RTC Central City Intermodal Transportation Terminal, Las Vegas, Nevada	485,437
NV	Sparks and Reno Bus and Bus Facilities, Nevada	57,330
NY	Broome County Hybrid Buses, New York	582,524
NY	Central New York Regional Transportation Authority	2,233,009
NY	Fort Edward Intermodal Station Interior Restoration/Rehabilitation Project, New York	291,262
NY	Jacobi Transportation Facility, New York	776,699
NY	Jamaica Intermodal Facilities, Queens, New York	388,350
NY	Livingston County Transportation Center, New York	388,350
NY	Main Street project for downtown Buffalo, New York	631,068
NY	Montgomery Buses, New York	38,834
NY	MTA/Long Island Bus clean fuel cell bus purchase, New York	970,874
NY	Myrtle Avenue Business Improvement District's Myrtle/Wyckoff/Palmetto Transit Hub Enhancement, New York	485,437
NY	Nassau County, Hub Enhancements, New York	1,165,048
NY	Oneonta Bus Replacement, New York	46,675
NY	Orange County Bus Replacement, New York	1,213,592
NY	Over the Road Bus Accessibility, Intercity Bus Accessibility Consortium, New York	2,912,620
NY	Rochester Central Bus Terminal, New York	5,339,805
NY	Rome Intermodal Station Restoration, New York	1,213,592

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## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
NY	Smithtown Senior Citizen Center Bus Replacement, New York	194,174
NY	Suffolk County Transit Buses, New York	1,844,660
NY	Tompkins County Bus Facilities, New York	388,350
NY	Union Station Renovations, Utica, New York	728,156
NY	Village of Pleasantville, Handicapped Ramp, New York	46,601
NY	Village of Pleasantville, Memorial Plaza, New York	194,174
NY	Western Gateway Transportation Center Intermodal Facility, Schenectady, New York	388,350
NY	Wyandanch Intermodal Transit Facility, New York	388,351
OH	Central Ohio Transit Authority Facility	436,894
OH	Kent State University Intermodal Facility, Ohio	364,077
OH	Lorain Port Authority Lighthouse Shuttle and Black River Water Taxi Project, Ohio	194,174
OH	Montgomery County Commission in Ohio/Greater Dayton Regional Transit Authority, Ohio	728,156
OH	Ohio Statewide buses and bus facilities	3,750,650
OH	The Banks Intermodal Facility, Cincinnati, Ohio	1,456,311
OH	Wright Stop Plaza, Dayton, Ohio	1,456,311
OH	Zanesville Bus System Improvements, Ohio	19,418
OK	Central Oklahoma Transportation and Parking Authority	1,766,990
OK	Kibios Area Transit System (KATS) maintenance facility and vehicles, Oklahoma	631,068
OK	Multi-Modal Transportation Facility and Transit System at Oklahoma State University, Oklahoma	2,184,466
OK	Norman buses and bus facilities, Oklahoma	2,912,620
OK	Northern Oklahoma Regional Multimodal Transportation System	2,427,184
OK	Oklahoma City Buses, Oklahoma	2,184,466
OK	Oklahoma Department of Transportation Transit Programs Division	6,067,961
OK	Tulsa Transit Bus Replacement Program, Oklahoma	4,368,931
OK	Tulsa Transit Paratransit Buses, Oklahoma	728,156
OR	City of Canby Transit Center, Oregon	145,632
OR	Lane Transit District, BRT Phase II, Coburg Road Phase III, Oregon	1,941,747
OR	Lincoln County Transportation, Bus Garage Facility, Oregon	194,174
OR	Salem Area Transit, Bus Replacement, Oregon	582,524
OR	South Clackamas Transit, Molalla, Oregon	97,088
OR	Springfield Station, Oregon	1,586,197
OR	Tillamook County Transit, Maintenance Facility, Oregon	194,174
OR	Wilsonville Park and Ride, Oregon	118,965
OR	Yamill County buses and bus facilities, Oregon	97,088
PA	Adams County Transit Authority (ACTA) buses and bus facilities, Pennsylvania	19,418
PA	Allentown Intermodal Facility, Pennsylvania	2,427,184
PA	Altoona Bus Testing (TEA-21)	2,962,170
PA	AMTRAN Buses and Transit System Improvements, Pennsylvania	194,174
PA	Area Transit Authority buses and bus equipment, Pennsylvania	2,427,184
PA	Butler Multi-Modal Transit Center, Pennsylvania	970,874
PA	Capital Area Transit Buses, Pennsylvania	373,400
PA	Centre Area Transit Authority, Advanced Public Transportation Systems Initiative, Pennsylvania	582,524
PA	Church Street Transportation Center, Williamsport, Lycoming County, Pennsylvania	242,718
PA	City Bus, Williamsport Bureau of Transportation, Lycoming County, Pennsylvania	970,874
PA	Endless Mountain Transportation Authority, Bradford County, Pennsylvania	9,709
PA	Erie Metropolitan Transit Authority Bus Acquisition, Pennsylvania	97,088
PA	Fayette County Intermodal Transit Facility, Pennsylvania	388,350
PA	Harrisburg Intermodal Airport Multi-Modal Transportation Facility, Pennsylvania	970,874
PA	Hazleton Intermodal Public Transit Center, Pennsylvania	1,699,029
PA	Lebanon County Transit Authority, buses and bus related facilities, Pennsylvania	436,894
PA	Mid County Transit Authority Kittanning, Pennsylvania	388,350
PA	Mid Mon Valley Transit Authority, Charleroi, Pennsylvania	582,524
PA	New Castle Transit Authority replacement buses, Pennsylvania	97,088

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## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
PA	Paoli Transportation Center, Pennsylvania	485,437
PA	Pittsburgh Water Taxi, Pennsylvania	970,874
PA	Port Authority of Allegheny County Buses, Pennsylvania	2,669,902
PA	Port Authority of Allegheny County Clean Fuel Buses, Pennsylvania	2,213,592
PA	SEPTA Bucks County Intermodal Facility Improvements, Pennsylvania	3,398,058
PA	Transit Authority of Warren County Intermodal Bus Facility, Pennsylvania	1,456,311
PA	Union County Union/Snyder Transportation Alliance (USTA), Pennsylvania	485,437
PA	Westmoreland County Transit Authority (WCTA) Bus Replacement, Pennsylvania	873,786
PR	Puerto Rico Metropolitan Bus Authority Replacement	116,688
RI	RIPTA Buses and Vans, Rhode Island	3,883,494
RI	RIPTA Facilities Upgrade, Rhode Island	388,350
SC	City of Greenville Multimodal Transportation Center Improvements, South Carolina	194,174
SC	Medical University of South Carolina Intermodal Facility, South Carolina	3,883,494
SC	Myrtle Beach Regional Multimodal Transit Center, South Carolina	194,174
SC	North Charleston Regional Intermodal Transportation Center, South Carolina	1,213,592
SC	South Carolina Statewide Transit Facilities Construction Project	970,874
SC	South Carolina Statewide Transit Vehicles	3,883,494
SD	Cheyenne River Sioux Tribe public buses and bus facilities, South Dakota	2,184,466
SD	South Dakota Statewide buses and bus facilities	1,532,407
TN	Downtown Transit Center, Nashville, Tennessee	1,941,747
TN	Knoxville Electric Transit Intermodal Center, Tennessee	1,941,747
TN	Memphis International Airport Intermodal Facility, Tennessee	641,782
TN	Nashville replacement of aged buses, Tennessee	485,437
TN	Tennessee Statewide buses and bus facilities	5,631,640
TX	Austin Capital Metro buses and bus facilities, Texas	2,912,620
TX	Brazos County Bus Replacement Program, Texas	194,174
TX	Capital Metro Hybrid Electric Buses, Texas	485,437
TX	Corpus Christi buses and bus facilities, Texas	1,941,747
TX	El Paso Sun Metro Bus Replacement, Texas	970,874
TX	Ft. Worth Transportation Authority Fleet Modernization and Bus Transfer Centers, Texas	1,456,311
TX	Galveston Maintenance Facility Renovations, Texas	776,699
TX	Grapevine Bus Purchase, Texas	155,340
TX	Hunt County Committee on Aging Transportation Facility, Texas	388,350
TX	Laredo Bus Facility, Texas	825,243
TX	Lubbock/Citibus Buses, Texas	1,456,311
TX	Nacogdoches Vehicle Replacement, Texas	776,699
TX	Public Transportation Management, Tyler/Longview, Texas	339,806
TX	San Antonio VIA Metropolitan Transit buses and bus facilities, Texas	1,982,747
TX	South East Texas Transit Facility Improvements and Bus Replacements	242,718
TX	The District-Bryan Intermodal Transit Terminal/Parking Facility & Pedestrian Improvements, Texas	388,350
TX	The Woodlands Capital Costs, Texas	339,806
TX	The Woodlands Park and Ride Expansion, Texas	266,990
UT	Utah Statewide buses and bus facilities	565,889
VA	Alexandria After School Bus program, Virginia	72,815
VA	Clean Fleet Bus Purchase and Facilities, Virginia	970,874
VA	Fairfax County, Richmond Highway Transit Improvements, Virginia	679,612
VA	Hampton Roads Transit Southside Bus Facility, Virginia	1,941,747
VA	Main Street Station Multimodal Transportation Center, Virginia	1,456,311
VA	Potomac and Rappahannock Transportation Commission, Virginia	485,437
VA	Richmond Highway Public Transportation Initiative, Virginia	2,912,620
VT	Brattleboro Multimodal, Vermont	1,941,747
VT	Burlington Transit Facilities, Vermont	2,427,184
VT	Vermont Alternative Fuel Station and Buses, Vermont	485,437

## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
VT	Vermont, Bus Upgrades	776,699
WA	Clallam Transit Buses, Washington	242,718
WA	Clark County Transit, Bus Replacement Project, Washington	700,125
WA	Community Transit Bus and Van Replacement, Washington	970,874
WA	Edmonds Crossing Multimodal Transportation Terminal, Washington	1,941,747
WA	Everett Transit, Bus Replacement, Washington	970,874
WA	Grant Transit Authority, Bus Facility, Washington	485,437
WA	Grays Harbor Transportation Authority Capital Improvement, Washington	72,815
WA	Intercity Transit Bus Expansion and Replacement, Washington	396,550
WA	Jefferson Transit bus purchase, Washington	194,174
WA	Jefferson Transit Facilities, Washington	970,874
WA	King County Metro Clean Air Buses, Washington	1,166,876
WA	Mason County Transportation Authority Capital Improvements, Washington	46,674
WA	Metro Transit Turn Around at Taylor Landing Park, Washington	38,834
WA	Mukilteo Lane Park and Ride, Washington	970,874
WA	North Bend Park and Ride, Washington	582,524
WA	Pierce Transit Maintenance and Operations facility, Washington	970,874
WA	Snohomish County Community Transit Park and Ride Lot Expansion Program, Washington	1,941,747
WA	Sound Transit Regional Express Transit Hubs, Washington	941,747
WA	Washington State Small Bus System Program of Projects	
WA	Clallam Transit	270,689
WA	Columbia County Public Transportation (CCPT)	40,525
WA	Grays Harbor Transportation Authority	56,655
WA	Island Transit	426,813
WA	Jefferson Transit	163,672
WA	Mason County Transportation Authority	188,852
WA	Pullman Transit	34,622
WA	Twin Transit	42,491
WA	Valley Transit	278,557
WI	Wisconsin, Statewide buses and bus facilities	4,362,677
WV	Washington County	54,700
WV	West Virginia Statewide buses and bus facilities	3,883,494
WY	Wyoming Statewide buses and bus facilities	1,941,747
	<b>Subtotal FY 2004 Unobligated Allocations</b>	<b>\$503,263,965</b>
	<b>TOTAL UNOBLIGATED ALLOCATION</b>	<b>\$758,329,574</b>

*FY 2004 Transferred Funds*

NY	North Country Bus and Bus Related Equipment	\$4,500,000	y/
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**Fiscal Years 1998, 1999, 2000, 2001 and 2002 Extended Allocations**

AK	Homer Alaska Maritime Wildlife Intermodal and welcome center, 2001	841,768	
AL	City of Montgomery's Rosa Parks bus project, 2001	247,579	z/
AL	Alabama State Dock intermodal passenger and freight terminal bus and bus related facilities, 2002	4,950,145	
CA	Gold Line Foothill Extension bus transit facility/City of Monrovia natural gas vehicle fueling facility, 2002	267,308	a/
CA	Costa Mesa CNG facility, 2002	247,507	
CA	Fort Bragg Bus Storage Facility/North Ukiah Transit Center, 2002	297,009	ab/ ac/
CA	North County Transit District, initial design and planning for new intermodal center, 2002	297,009	
CA	San Bernardino CNG/LNG buses, 2002	371,261	
CA	Sierra Madre Villa & Chinatown intermodal transportation centers/Los Angeles County Metropolitan Transportation Authority bus and bus related facilities in LACMTA's service area, 2002	1,485,043	
CA	Transportation Hub at the Village of Indian Hills, 2002	990,029	ad/
CT	Norwich bus terminal and pedestrian access, 2001	990,315	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION	
CT	East Haddam transportation vehicles and transit facilities, 2002	415,812	
CT	Greater New Haven District CNG vehicle project (ConnDOT), 2002	0	ae/
GA	Macon terminal intermodal station, 2002	885,044	
IN	Indianapolis downtown transit facility, 2002	2,943,342	
MA	Springfield Union Station intermodal facility, 2002	2,440,118	
MI	Blue Water Area Transportation Commission bus facilities, 2002	1,485,044	
MN	Greater Minnesota Transit Authority bus, paratransit and transit hub (MNDOT), 2002	0	af/
MO	St. Louis Metro Transit Agency/Cab Care paratransit facility, 2002	495,015	ag/ ah/
MO	Missouri Pacific Depot, 2002	495,015	
MT	Area VII agency on aging bus facility/Statewide bus and bus facilities, 2002	0	b/ ai/
MT	Ravalli County Council on aging bus facility/Statewide bus and bus facilities, 2002	0	b/ ai/
MT	Statewide bus and bus facilities, MT, 2002	889,595	b/ ai/
NH	Granite State Clean Cities Coalition CNG buses and facilities, 2002	990,029	z/
NM	Las Cruces intermodal transit facility, 2002	1,980,058	
NV	Reno/Sparks intermodal transportation terminals and related joint development/Reno Bus Rapid Transit high-capacity articulated buses, 2002	1,485,044	b/ ab/ aj/
NY	Binghamton Intermodal Transportation Center, 2000	1,103,732	
NY	Bronx Zoo intermodal transportation facility, 2001	247,579	
NY	Binghamton intermodal terminal, 2002	1,980,058	
NY	City of Middletown buses and bus facilities, 2002/Tompkins consolidated transit center, 2002	320,000	ab/ ak/
NY	Station Plaza commuter parking lot, 2002	495,015	ab/
NY	Tompkins County bus and bus facilities, 2002/Tompkins consolidated transit center, 2002	57,778	ak/
PA	Wilkes Barre intermodal facility, 1998	969,794	
PA	Wilkes Barre intermodal facility, 1999	1,240,625	
PA	Wilkes Barre intermodal facility, 2000	1,226,369	
PA	Wilkes Barre intermodal transportation center, 2001	990,315	
PA	Butler Township multi-modal transfer center, 2002	245,015	z/
PA	Callowhill bus garage replacement, 2002	3,267,096	z/
PA	Monroe County Transit Authority park and ride, 2002	594,017	z/
PA	Wilkes Barre intermodal facility, 2002	990,029	
SD	Oglala Sioux Tribe buses and bus facilities, 2002	2,227,565	
WV	Morgantown Intermodal parking facility, 2002	278,058	al/
WY	Southern Teton Area Rapid Transit bus facility, 2002	495,015	al/
<b>Total Extended Allocation</b>		<b>\$42,217,149</b>	

*The FY 2005 Consolidated Appropriations Act; House, Senate, and Conference Committees Reports; and a May 20, 2004 letter from Chairman Istook and Chairman Shelby have provided instructions to FTA regarding the following prior year obligated Bus and Bus-Related Facilities projects:*

AK	Port MacKenzie Intermodal Facility project/Matanuska Susitna Borough	am/
IN	South Street Station Project/South Bend Bus Operations Center Project	an/
PA	Philadelphia, Regional Transportation System for Elderly and Disabled	ao/
MI	Detroit bus and bus facilities	ap/ aq/
MO	Houston buses and bus facilities/Bus acquisition for Houston, Missouri	ar/
NM	Santa Fe Bus facility/Santa Fe Bus facility renovation	as/
NY	Buffalo, NY Inner Harbor Redevelopment Project/Crossroads intermodal Station, New York/Buffalo, New York Intermodal facility/Buffalo Intermodal Transportation Center	f/
VA	Virginia Beach intermodal facility and bus rapid transit project/Virginia Beach intermodal facility, Virginia	at/

a/ Funds provided in fiscal year 2003 to the cities of Hoover and Vestavia Hills for diesel hybrid buses shall instead be available to procure alternative fuel buses (S. Rept. 108-342).

b/ Funds shall be available until September 30, 2007 (H.R. 4818, SEC. 161).

## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE PROJECT	ALLOCATION
c/ Notwithstanding any other provision of law, any unobligated funds made available under the bus category of the Capital Investment Account in prior year Appropriations Acts for the Greater New Haven Transit District Fuel Cell and Electric Bus project or CNT/alternative fuel vehicle project shall be transferred to and administered under the Transit Planning and Research account, subject to such terms and conditions as the Secretary deems appropriate (H.R. 4818, SEC. 169). Amount transferred is \$983,679.	
d/ Funds made available in Public Law 108-10 for Hawaii: BRT Systems, Appurtenances and Facilities shall be generally available for bus and bus facilities by the City and County of Honolulu (H.R. 4818, SEC. 171). [Note: The reference should be to funds designated in H. Rept. 108-10.]	
e/ The Federal Register Apportionments Notice of December 29, 2004 listed an incorrect funds balance for this project (\$2,912,620).	
f/ Of funds so made available in Items 18 and 19 of the table contained in section 3031 of Public Law 105-178, \$5,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 104-50 for Crossroads Intermodal Station, New York, \$1,000,000 shall be available for the Buffalo Inner Harbor Redevelopment Project; of the funds made available in Public Law 104-205 for Crossroads Intermodal Station, New York, \$1,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 106-346 for Buffalo, New York Intermodal facility, \$500,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 108-7 for Buffalo Intermodal Transportation Center, \$5,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project. (H.R. 4818, SEC. 527)	
g/ Amounts made available in fiscal year 2003 for Utica Transit Authority Buses, New York shall be made available for Oneida County buses and transit items (H. Rept. 108-192).	
h/ The Statement of Managers accompanying the Fiscal Year 2003 Appropriations Act includes \$2,600,000 for the Clark County, WA C-TRAN Vancouver Mall Transit Center. It is the intent of the conferees that these funds shall be used for the Clark County, WA C-TRAN Vancouver Bus and Bus Transit Center. (5/25/05 Letter from Knollenberg/Bond)	
i/ The Conference report (H.Rpt. 108-01) accompanying the FY2004 DOT Appropriations Act (Pub.L. 108-199) designates \$1,000,000 for "AC Transit Expansion Buses, California." It is the intent of the conferees that this language should read "AC Transit Rapid Bus Improvements, California." (5/20/2004 Letter from Istook/Shelby)	
j/ Amounts made available in fiscal year 2004 for Alameda Point Areil Transit Project, California shall be available for the Fairfield/Vacaville Intermodal Transit Station, California (H. Rept. 108-792).	
k/ The Statement of Managers accompanying the Fiscal Year 2004 Appropriations Act includes \$200,000 for the Davis Intermodal Facility, California. It is the intent of the conferees that the funds shall be available for the Davis, California intermodal parking structure. (5/25/05 Letter from Knollenberg/Bond)	
l/ FTA can honor the conferees' intention that funds designated for this project be reprogrammed for the purposes outlined the 5/25/05 letter of clarification addressed to Secretary Mineta and signed by Senator Bond and Representative Knollenberg, but can only do so to the extent that the funds are expended on activities that meet the bus category criteria set forth in 49 U.S.C. 5309.	
m/ Amounts made available in fiscal year 2004 for the Santa Barbara Metropolitan Transit District electric bus investment in California shall be made available to the Ventura County Transportation Commission to fulfill the intent of this project (S. Rept. 108-342).	
n/ The Federal Register Apportionments Notice of December 29, 2004 erred in listing this project twice.	
o/ The Statement of the Mangers accompanying the Fiscal Year 2004 Appropriations Act includes \$3,000,000 for the East Haddam Mobility Improvement Project, Connecticut. It is the intent of the conferees that these funds be available for transportation construction and improvements in East Haddam. (3/3/2005 Letter from Knollenberg/Shelby)	
p/ Notwithstanding any other provision of law, any unobligated funds made available under the bus category of the Capital Investment Account in prior year Appropriations Acts for the Greater New Haven Transit District Fuel Cell and Electric Bus project or CNT/alternative fuel vehicle project shall be transferred to and administered under the Transit Planning and Research account, subject to such terms and conditions as the Secretary deems appropriate (H.R. 4818, SEC. 169). Amount transferred is \$1,456,311.	
q/ The Statement of the Mangers accompanying the Fiscal Year 2004 Appropriations Act includes \$4,000,000 for the North Florida and West Coast Bus Procurement, Florida. It is the intent of the conferees that the unspent balance of \$94,757 [amount left undesignated by the state] be available to initiate Phase IV of the Gainesville Regional Transit System (RTS) site development, which includes the expansion of the RTS maintenance facility. (3/3/2005 Letter from Knollenberg/Shelby)	
r/ Amounts made available in fiscal year 2004 for Newton Rapid Transit Handicap Access Improvements, Massachusetts shall be available for making handicap accessibility improvements to the Auburndale Station in Newton, MA (H. Rept. 108-792).	
s/ Amounts made available in fiscal year 2004 to Barry County Transit for replacement maintenance equipment shall be available for bus diagnostic equipment, service equipment, and computer hardware, software, and related equipment (H. Rept. 108-671).	
t/ Amounts made available in fiscal year 2004 to Clinton County Transit, Michigan for a bus purchase shall be available for the purchase of scheduling software (H. Rept. 108-671).	
u/ Amounts made available in fiscal year 2004 to Manistee County Transportation, Inc. for replacement buses shall be made available for a replacement service truck and facility renovations (H. Rept. 108-671).	
v/ The Federal Register Apportionments Notice of December 29, 2004 listed an incorrect funds balance for this project (\$982,263).	
w/ The Statement of Managers accompanying the Fiscal Year 2004 Appropriations Act includes \$300,000 for the Great Falls Transit Authority bus replacement and facility improvement in Montana. It is the intent of the conferees that these funds shall be available for the Great Falls Transit District bus and bus facilities, Montana. (5/25/05 Letter from Knollenberg/Bond)	
x/ The Statement of Managers accompanying the Fiscal Year 2004 Appropriations Act includes \$750,000 for the Greater Dayton Regional Transit Authority in Ohio. It is the intent of the conferees that the Montgomery County Commission in Ohio should be the recipient. (5/25/05 Letter from Knollenberg/Bond)	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 10

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

STATE	PROJECT	ALLOCATION
	y/ Unobligated funds in an amount not to exceed \$4,500,000 that were designated to the North Country County Consortium, New York project in the conference report accompanying Public Law 108-99 under the Job Access and Revere Commute Account shall be transferred to and administered under the bus category of the Capital Investment Grants Account and available for North Country Country Bus and Bus Related Equipment (H.R. 4818, SEC 531).	
	z/ This project was extended in the Senate report accompanying the Consolidated Appropriations Act, 2005 but was not listed in the Federal Register Apportionments Notice of December 29, 2004.	
	aa/ Amounts made available to the City of Monrovia, California for a natural gas vehicle fueling facility in fiscal year 2002 shall be made available for the construction of a bus transit facility along the Gold Line Foothill Extension. Funds shall be extended for obligation for one year (H. Rept. 108-671).	
	ab/ This project was not listed in the Federal Register Apportionments Notice of December 29, 2004	
	ac/ The Statement of the Managers accompanying the Fiscal Year 2002 Appropriations Act includes \$300,000 for North Ukiah Transit Center, California. It is the intent of the conferees that these funds shall be available for the Fort Bragg Bus Storage Facility, California. (3/3/2005 Letter from Knollenberg/Shelby)	
	ad/ This project was extended in the House report accompanying the Consolidated Appropriations Act, 2005 but was not listed in the Federal Register Apportionments Notice of December 29, 2004.	
	ae/ Notwithstanding any other provision of law, any unobligated funds made available under the bus category of the Capital Investment Account in prior year Appropriations Acts for the Greater New Haven Transit District Fuel Cell and Electric Bus project or CNT/alternative fuel vehicle project shall be transferred to and administered under the Transit Planning and Research account, subject to such terms and conditions as the Secretary deems appropriate (H.R. 4818, SEC. 169).. Amount transferred is \$990,029.	
	af/ The Federal Register Apportionments Notice of December 29, 2004 listed an incorrect funds balance for this project (\$135,520).	
	ag/ Funds made available in fiscal year 2002 for Cab Care, St. Louis, Missouri shall be made available for St. Louis Metro Transit Agency, St. Louis, Missouri. The availability for such funds for obligation shall be extended through fiscal year 2005. (H. Rept. 108-671)	
	ah/ The [conference report accompanying the Department of Transportation and Related Agencies Appropriations Act, 2002] provides \$500,000 for the 'Cab Care paratransit facility' in Missouri. It is the intent of the conferees that these funds be redirected to Metro St. Louis for paratransit public transportation services. (8/17/2004 Letter from Istook/Shelby)	
	ai/ Unobligated balances from amounts made available in fiscal year 2002 to Area VII Agency on Aging Bus and Bus Facility and Ravalli County Council on Aging Bus and Bus Facility shall be combined with and made available for Statewide Buses and Bus Facilities (H. Rept. 108-792).	
	aj/ Amounts made available in fiscal year 2002 for the Reno bus rapid transit high-capacity articulated buses shall be available for the Reno/Sparks intermodal transportation terminals and related joint development (S. Rept. 108-342).	
	ak/ This project was created by a reprogramming of the original designation for Tompkins consolidated transit center, 2002, in the FY2003 Conference report (H. Rept. 108-10). Funds are available until September 30, 2005. See Federal Register Apportionment Notices of March 12, 2003 and March 24, 2004 for additional information.	
	al/ This project was extended in the Conference report accompanying the Consolidated Appropriations Act, 2005 but was not listed in the Federal Register Apportionments Notice of December 29, 2004.	
	am/ Notwithstanding any other provision of law, any unobligated funds made available to the Matanuska Susitna Borough under "Federal Transit Administration, Buses and Bus Facilities" shall be available for expenditure on ferry boat and ferry facilities and related expenses as part of the Port MacKenzie Intermodal Facility project (H.R. 4818, SEC. 170).	
	an/ Amounts previously obligated for the South Street Station Project in fiscal year 1996 and 1997 shall be made available for the South Bend Bus Operations Center Project in South Bend, Indiana (H. Rept. 108-792).	
	ao/ The Department of Transportation and Related Agencies Appropriations Act, 1999, provided \$750,000 for the Philadelphia, Regional Transportation System for Elderly and Disabled. The Committee understands that the original grant recipient has been unable to use the funds provided. Therefore, the Committee directs the Southeastern Pennsylvania Transportation Authority (SEPTA) shall serve as grant recipient and administering agency for the purpose of carrying out the original intent of this project. (H. Rept. 108-671)	
	ap/ House retained language regarding Detroit bus and bus facilities should read "Public Law 106-69" instead of "Public Law 106-109" (H. Rept. 108-792)	
	aq/ Funds provided to Detroit, Michigan for transfer terminal facilities under buses and bus facilities in Public Law 106-109 [see note ah/] and Public Law 108-199 may be available to Detroit for the replacement, rehabilitation, or construction of bus-related facilities (H. Rept. 108-671). [Note: Because the earmark in Public Law 106-69 was in law, not report language, this clarification is limited by the intent of the original earmark, which is for transfer terminal facilities.]	
	ar/ The conference report (H. Rpt. 108-10) accompanying the FY 2003 DOT Appropriations Act (Pub. L. 108-7) designated \$100,000 for bus acquisition for Houston, Missouri. It is the intent of the conferees that these funds be available to "Houston buses and bus facilities" to allow for the purchase and renovation or purchase of a building to house transit vehicles." (5/20/2004 Letter from Istook/Shelby)	
	as/ The conference Report (H. Rpt. 108-10) accompanying the FY 2003 DOT Appropriations Act (Pub. L. 108-7) designated \$200,000 for the Santa Fe Bus facility renovation in New Mexico. It is the intent of the conferees that these funds be available to the "Santa Fe Bus facility." (5/20/2004 Letter from Istook/Shelby)	
	at/ The conference Report (H.R. Rpt. 104-785) accompanying the FY 1997 DOT Appropriations Act (Pub. L. 104-205) provided \$1,000,000 to the Virginia Beach intermodal facility, Virginia. It is the intent of the conferees that these funds be available for the "Virginia Beach intermodal facility and bus rapid transit project." (5/20/2004 Letter from Istook/Shelby)	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 11

## REVISED FY 2005 SECTION 5309 NEW STARTS ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
AK/HI	Hawaii and Alaska Ferry Boats	\$10,213,632
AL	Birmingham, Alabama, Transit Corridor	992,000
AR	Little Rock, Arkansas, River Rail Streetcar Project	3,472,000
AZ	Phoenix, Arizona, Central Phoenix/East Valley Corridor	74,400,000
CA	San Francisco, California, BART Extension to San Francisco Airport	99,200,000
CA	Los Angeles, California, East Side Light Rail Transit System	59,520,000
CA	Los Angeles Gold Line Foothill Extension	496,000
CA	Los Angeles, California, MOS3 Metro Rail (North Hollywood)	663,339
CA	San Diego, California, Mid-Coast Light Rail Extension	992,000
CA	San Diego, California, Mission Valley East Light Rail Extension	80,986,880
CA	San Diego, California, Oceanside - Escondido Rail Corridor	54,560,000
CA	San Francisco, California, Muni Third Street Light Rail Project	9,920,000 <sup>a/</sup>
CA	Santa Clara County, California, Silicon Valley Rapid Transit Corridor	2,480,000
CO	Denver, Colorado, Southeast Corridor LRT	79,360,000
CT	Stamford, Connecticut, Urban Transitway, Phase 2	2,976,000
FL	Fort Lauderdale, Florida, South Florida Commuter Rail Upgrades	11,210,695
GA	Atlanta, Georgia, North Springs (North Line Extension)	263,287
IL	Chicago, Illinois, Metra Commuter Rail Expansions and Extensions	51,584,000
IL	Chicago, Illinois, Douglas Branch Reconstruction	84,320,000
IL	Chicago, Illinois, Ravenswood Line Extension	39,680,000
IN	South Shore Commuter Rail Service, Indiana	2,480,000
LA	New Orleans, Louisiana, Canal Street Streetcar Project	16,455,206
MA	Boston, Massachusetts, Silver Line III	2,976,000
MD	Baltimore, Maryland, Central Light Rail Double Track	28,777,920
MD	Washington, DC/Metropolitan Area, Largo Extension	75,432,887
MN	Minneapolis, Minnesota, Hiawatha Light Rail Project	33,111,257
MN	Minneapolis, Minnesota, Northstar Commuter Rail Project	4,960,000
MO	St. Louis, Missouri, Metro Link St. Clair Extension	53,383
NC	Charlotte, North Carolina, South Corridor Light Rail Project	29,760,000
NC	Raleigh, North Carolina, Triangle Transit Authority Regional Rail Project	19,840,000
NJ	New Jersey Trans-Hudson Midtown Corridor	1,190,400
NJ	Northern New Jersey, Newark-Elizabeth Rail Line MOS-1	1,342,076
NJ	Northern, New Jersey Hudson - Bergen MOS-1	313,896
NJ	Northern, New Jersey Hudson - Bergen MOS-2	99,200,000
NV	CATRAIL RTC Rail Project, Nevada	992,000
NV	Las Vegas, Nevada, Resort Corridor Fixed Guideway Project	29,760,000
NY	New York, New York, Long Island Rail Road Eastside Access	99,200,000
OH	Cleveland, Ohio, Euclid Corridor Transportation Project	24,800,000
OR	Portland, Oregon, Interstate MAX Light Rail Extension	23,292,160
OR	I-5/I-205/SR250, Transit Loop, Washington and Oregon	1,488,000
OR	Washington County, Oregon, Wilsonville to Beaverton Commuter Rail Project	8,928,000
PA	Philadelphia, Pennsylvania, Schuylkill Valley MetroRail	9,920,000
PA	Pittsburgh, Pennsylvania, North Shore Light Rail Connector	54,560,000
PA	Pittsburgh, Pennsylvania, Stage II Light Rail Transit Reconstruction	1,120,854
PA	Harrisburg, Pennsylvania, Corridor One	1,984,000
PR	San Juan, Puerto Rico, Tren Urbano Rapid Transit System	44,263,040
RI	Rhode Island, Integrated Intermodal Project	5,952,000
TN	Nashville, Tennessee, East Corridor Commuter Rail	1,984,000
TX	Capital Metro-Bus Rapid Transit Texas	992,000
TX	Dallas, Texas, NW/SE Extension	8,432,000
TX	Houston Advanced Metro Transit Plan, Texas	8,432,000
UT	Regional Commuter Rail (Weber County to Salt Lake City), Utah	7,936,000
UT	Salt Lake City, Utah, CBD to University LRT	1,127,405
UT	Salt Lake City, Utah, Medical Center Extension	8,682,141
VA	Dulles Corridor Rapid Transit Project, Virginia	24,800,000
VA	Norfolk, Virginia, Light Rail Transit Project	1,984,000
WA	Seattle, Washington, Central Link Initial Segment	79,360,000
WA	Sound Transit Sounder Commuter Rail, Lakewood to Nisqually, Washington	3,968,000
	Unallocated amount to be distributed	672,344
<b>TOTAL ALLOCATION</b>		<b>\$1,437,812,802</b>

a/ SEC. 174. Hereafter, notwithstanding any other provision of law, for the purpose of calculating the non-New Starts share of the total project cost of both phases of San Francisco Muni's Third Street Light Rail Transit project, the Secretary of Transportation shall include all non-New Starts contributions made towards Phase 1 of the two-phase project for engineering, final design and construction, and also shall allow non-New Starts funds expended on one element or phase of the project to be used to meet the non-New Starts share requirement of any element or phase of the project: Provided further, That none of the funds provided in this Act for the San Francisco Muni Third Street Light Rail Transit Project shall be obligated if the Federal Transit Administration determines that the project is found to be 'not recommended' after evaluation and computation of revised transportation system user benefit data.

## FEDERAL TRANSIT ADMINISTRATION

TABLE 12

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 2003 UNOBLIGATED ALLOCATIONS	FY 2004 UNOBLIGATED ALLOCATIONS	TOTAL UNOBLIGATED ALLOCATIONS
AK/HI	Alaska/Hawaii Ferry Project	\$7,706,298	\$10,133,105	\$17,839,403 a/ c/
AL	Birmingham- Transit Corridor Project	1,967,165	3,444,626	5,411,791
AR	Little Rock River Rail Streetcar Project	744,187	2,952,537	3,696,724
CA	Phase II, LA to Pasadena Metro Gold Line Light Rail Project		3,936,715	3,936,715
CA	San Diego, California, Mission Valley East Light Rail Transit Extension	0	26,563,707	26,563,707
CA	San Diego, California, Oceanside - Escondido Rail Project	0	47,240,585	47,240,585
CA	San Jose, California, Silicon Valley Rapid Transit Corridor	0	1,968,358	1,968,358
CO	Denver, Colorado, Southeast Corridor LRT (T-REX)		19,616,283	19,616,283
CT	Bridgeport Intermodal Transportation Center	2,458,956	0	2,458,956
CT	Metro North Rolling Stock	3,934,330	0	3,934,330
CT	Stamford Urban Transitway Project	0	3,936,715	3,936,715
DE	Wilmington-Downtown Transit Connector Project (Commuter Rail Improvements)	4,953,216	0	4,953,216
DE	Wilmington Train Station Improvements	1,967,165	1,476,268	3,443,433
FL	Fort Lauderdale Tri-County Commuter Rail Upgrades	0	4,514,198	4,514,198
GA	Atlanta, Georgia, Northwest Corridor BRT		2,115,407	2,115,407
LA	New Orleans Canal Street Car Line Project	0	11,175,644	11,175,644
MA	Boston-North Shore Corridor Project	332,450	0	332,450
MA	Boston Silver Line Phase III		1,968,358	1,968,358
MA	Boston-South Boston Piers Transitway Project	669,820	0	669,820
MA/NH	Lowell, MA - Nashua, NH Commuter Rail Project	2,950,747	0	2,950,747
MD	Baltimore, Maryland, Central Light Rail Double Track Project		16,346,896	16,346,896
MD	MARC Commuter Rail Improvements Project	11,557,093	0	11,557,093
ME	Maine Marine Highway		1,525,477	1,525,477
ME	Yarmouth to Auburn Line, Maine		984,179	984,179
MN	Minneapolis Rice, Northstar Corridor Commuter Rail Project	4,917,912	5,659,028	10,576,940
NC	Charlotte South Corridor Transitway Project	0	2,942,442	2,942,442
NC	Raleigh-Durham-Chapel Hill-Triangle Transit Project	0	2,247,984	2,247,984
NC	Western North Carolina Rail Passenger Service		984,179	984,179
NV	Las Vegas Resort Corridor Fixed Guideway Project	6,885,077	19,683,577	26,568,654
OH	Cleveland-Euclid Corridor Improvement Project	400,000	10,825,967	11,225,967
OK	Northern Oklahoma Regional Multimodal Transportation System		2,952,537	2,952,537
PA	Philadelphia-Reading SEPTA Schuylkill Valley Metro Project	8,852,242	13,778,504	22,630,746
PA	Scranton to New York City, New York Passenger Rail Service	1,967,165	2,460,447	4,427,612 e/
RI	Integrated Intermodal Project, Rhode Island		2,952,537	2,952,537
TN	Memphis, Tennessee, Medical Center Rail Extension		9,101,281	9,101,281
TX	Houston-Advanced Transit Program	0	1,961,629	1,961,629
TX	Dallas, Texas, North Central Light Rail Extension		9,259,540	9,259,540
UT	Regional Commuter Rail (Weber County to Salt Lake City), Utah	0	3,678,052	3,678,052
UT	Salt Lake City, Utah, Medical Center LRT Extension		30,178,231	30,178,231
VA	Dulles Corridor Project	26,064,934	19,683,577	45,748,511
VA	Virginia Railway Express	0	2,952,537	2,952,537
VT	Burlington-Middlebury Commuter Rail Project	-----	-----	----- d/
VT	Vermont Transportation Authority Rolling Stock	-----	-----	----- d/
WA	Puget Sound RTA Sounder Commuter Rail Project	15,397,954	0	15,397,954
WI	Kenosha-Racine-Milwaukee Commuter Rail Project	0	3,198,581	3,198,581
<b>TOTAL UNOBLIGATED ALLOCATION</b>		<b>\$103,726,711</b>	<b>\$304,399,688</b>	<b>\$408,126,399</b>

## FEDERAL TRANSIT ADMINISTRATION

TABLE 12

## REVISED PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 2003 UNOBLIGATED ALLOCATIONS	FY 2004 UNOBLIGATED ALLOCATIONS	TOTAL UNOBLIGATED ALLOCATIONS
<b>Fiscal Years 2000, 2001 and 2002 Allocations Extended in FY 2005 Conference Report (House Rpt. 108-792)</b>				
AL	Birmingham, Alabama, Transit Corridor			\$6,933,242
DC	Dulles Corridor Project			24,750,327
HI	Honolulu, Hawaii, Bus Rapid Transit Project			8,900,000 <sup>b/</sup>
IN	Northeast Indianapolis, Indiana, Downtown Corridor Project			5,068,042
MD	Maryland (MARC) Commuter Rail Improvements Projects			5,880,157
NM	Albuquerque, NM-Light Rail Project			4,811,650
PA	Philadelphia, Pennsylvania-Schuylkill Valley Metro Project			8,910,118
PA	Philadelphia SEPTA Cross County Metro Project			1,981,286
WI	Kenosha-Racine-Milwaukee Rail Extension Project			3,723,677
<b>Total Extended Allocations</b>				<b>\$70,958,499</b>

a/ SEC. 165. Funds made available for Alaska or Hawaii ferry boats or ferry terminal facilities pursuant to 49 U.S.C. 5309(m)(2)(B) may be used to construct new vessels and facilities, or to improve existing vessels and facilities, including both the passenger and vehicle-related elements of such vessels and facilities, and for repair facilities: Provided, That not more than \$3,000,000 of the funds made available pursuant to 49 U.S.C. 5309(m)(2)(B) may be used by the State of Hawaii to initiate and operate a passenger ferryboat services demonstration project to test the viability of different intra-island and inter-island ferry boat routes and technology: Provided further, That notwithstanding 49 U.S.C. 5302(a)(7), funds made available for Alaska or Hawaii ferry boats may be used to acquire passenger ferry boats and to provide passenger ferry transportation services within areas of the State of Hawaii under the control or use of the National Park Service.

b/ SEC. 171. Notwithstanding any other provision of law, \$8,900,000 of the funds made available under the new fixed guideway systems category of the Capital Investment Grants account in Public Law 107-87 for the 'Honolulu, Hawaii, bus rapid transit project' shall be made available to the City and County of Honolulu for replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under 49 U.S.C. 5309 and shall remain available to the City and County of Honolulu for those purposes until expended: Provided, that any remaining unobligated balance from said project in Public Law 107-87 shall be transferred for any eligible activity under Title 23 of the United States Code, and administered under that Title, for use on improvements to the Kapolei Interchange Complex and shall remain available until expended: Provided further, That funds made available in Public Law 108-10 for 'Hawaii: BRT Systems, Appurtenances and Facilities' shall be generally available for bus and bus facilities by the City and County of Honolulu [Amount transferred \$2,980,157].

c/ SEC. 172. Notwithstanding any other provision of law, the Navy may receive funds from the State of Hawaii for the procurement of passenger ferry boats to provide passenger ferry transportation services for the Arizona War Memorial.

d/ SEC. 175. Funds made available for the Burlington-Bennington, Vermont Commuter Rail project in Public Law 106-346, the Burlington-Middlebury, Vermont Commuter Rail project and Vermont Transportation Authority Rolling Stock in Public Law 108-7 that remain unobligated, and funds made available for the Burlington-Essex, Vermont commuter rail project in Public Laws 105-277 and 105-66 that remain unexpended shall be transferred to the Federal Railroad Administration and made available to upgrade and improve the publicly-owned Vermont Rail Infrastructure from Bennington to Burlington with a northern terminus in Essex Junction: Provided, That the Federal share shall be 80 percent of the total cost of the project and funds shall remain available until expended [Amount transferred (FY 2003 - Burlington - Middlebury \$1,475,374) and (FY 2003 - Vermont Transportation Authority Rolling Stock \$491,791)].

e/ SEC. 179. Of the funds made available under the heading 'Federal Transit Administration--Discretionary Grants' in Public Laws 102-388 and 103-122 for the Hawthorne-Warwick Commuter Rail Project, \$4,000,000 shall be available for the Scranton, Pennsylvania, NY City Rail Service Fixed Guideway Project to be carried out in accordance with 49 U.S.C. 5309, \$1,100,000 shall be made available to study the feasibility of utilizing diesel multiple unit rolling stock on MOS-3 of the Hudson Bergen Light Rail Transit System to be carried out in accordance with 49 U.S.C. 5309, and \$6,000,000 shall be transferred to the Federal Railroad Administration and made available for the New York and Susquehanna and Western Rail Road Diesel Multiple Unit Compliance and Demonstration Project to be carried out under terms and conditions as determined by the Secretary: Provided, That the Federal share shall be 80 percent of the net project cost of that demonstration project and funds for that project shall remain available until expended.

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Gulfstream; comments due by 9-22-05; published 8-8-05 [FR 05-15589]

Meggitt PLC; comments due by 9-22-05; published 8-8-05 [FR 05-15590]

Pilatus Aircraft Ltd.; comments due by 9-23-05; published 8-22-05 [FR 05-16528]

Rolls-Royce Deutschland; comments due by 9-23-05; published 7-25-05 [FR 05-14574]

Airworthiness standards:  
Special conditions—

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15647]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15648]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15649]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15654]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15655]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15656]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15657]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15658]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15659]

Airbus Model A380-800 airplane; comments due by 9-23-05; published 8-9-05 [FR 05-15660]

McDonnell Douglas Model MD-10-10F and MD-10-30F airplanes; comments due by 9-21-05; published 8-22-05 [FR 05-16518]

Class D airspace; comments due by 9-22-05; published 8-23-05 [FR 05-16740]

Class E airspace; comments due by 9-19-05; published 8-3-05 [FR 05-15314]

**TRANSPORTATION  
DEPARTMENT**  
**National Highway Traffic  
Safety Administration**  
Motor vehicle safety standards:

Occupant crash protection—  
Advanced air bags;  
phase-in requirements;  
comments due by 9-19-05; published 7-20-05 [FR 05-14245]

Procedural rules:  
Foreign manufacturers and importers; service of process; comments due by 9-22-05; published 8-8-05 [FR 05-15561]

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## LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws1>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from

GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

### H.R. 3673/P.L. 109-62

Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina, 2005 (Sept. 8, 2005; 119 Stat. 1990)

Last List August 7, 2005

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**CFR CHECKLIST**

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869-056-00001-4)	5.00	Jan. 1, 2005
2	(869-056-00002-2)	5.00	Jan. 1, 2005
3 (2003 Compilation and Parts 100 and 101)	(869-056-00003-1)	35.00	1 Jan. 1, 2005
4	(869-056-00004-9)	10.00	4 Jan. 1, 2005
<b>5 Parts:</b>			
1-699	(869-056-00005-7)	60.00	Jan. 1, 2005
700-1199	(869-056-00006-5)	50.00	Jan. 1, 2005
1200-End	(869-056-00007-3)	61.00	Jan. 1, 2005
6	(869-056-00008-1)	10.50	Jan. 1, 2005
<b>7 Parts:</b>			
1-26	(869-056-00009-0)	44.00	Jan. 1, 2005
27-52	(869-056-00010-3)	49.00	Jan. 1, 2005
53-209	(869-056-00011-1)	37.00	Jan. 1, 2005
210-299	(869-056-00012-0)	62.00	Jan. 1, 2005
300-399	(869-056-00013-8)	46.00	Jan. 1, 2005
400-699	(869-056-00014-6)	42.00	Jan. 1, 2005
700-899	(869-056-00015-4)	43.00	Jan. 1, 2005
900-999	(869-056-00016-2)	60.00	Jan. 1, 2005
1000-1199	(869-056-00017-1)	22.00	Jan. 1, 2005
1200-1599	(869-056-00018-9)	61.00	Jan. 1, 2005
1600-1899	(869-056-00019-7)	64.00	Jan. 1, 2005
1900-1939	(869-056-00020-1)	31.00	Jan. 1, 2005
1940-1949	(869-056-00021-9)	50.00	Jan. 1, 2005
1950-1999	(869-056-00022-7)	46.00	Jan. 1, 2005
2000-End	(869-056-00023-5)	50.00	Jan. 1, 2005
8	(869-056-00024-3)	63.00	Jan. 1, 2005
<b>9 Parts:</b>			
1-199	(869-056-00025-1)	61.00	Jan. 1, 2005
200-End	(869-056-00026-0)	58.00	Jan. 1, 2005
<b>10 Parts:</b>			
1-50	(869-056-00027-8)	61.00	Jan. 1, 2005
51-199	(869-056-00028-6)	58.00	Jan. 1, 2005
200-499	(869-056-00029-4)	46.00	Jan. 1, 2005
500-End	(869-056-00030-8)	62.00	Jan. 1, 2005
11	(869-056-00031-6)	41.00	Jan. 1, 2005
<b>12 Parts:</b>			
1-199	(869-056-00032-4)	34.00	Jan. 1, 2005
200-219	(869-056-00033-2)	37.00	Jan. 1, 2005
220-299	(869-056-00034-1)	61.00	Jan. 1, 2005
300-499	(869-056-00035-9)	47.00	Jan. 1, 2005
500-599	(869-056-00036-7)	39.00	Jan. 1, 2005
600-899	(869-056-00037-5)	56.00	Jan. 1, 2005

Title	Stock Number	Price	Revision Date
900-End	(869-056-00038-3)	50.00	Jan. 1, 2005
13	(869-056-00039-1)	55.00	Jan. 1, 2005
<b>14 Parts:</b>			
1-59	(869-056-00040-5)	63.00	Jan. 1, 2005
60-139	(869-056-00041-3)	61.00	Jan. 1, 2005
140-199	(869-056-00042-1)	30.00	Jan. 1, 2005
200-1199	(869-056-00043-0)	50.00	Jan. 1, 2005
1200-End	(869-056-00044-8)	45.00	Jan. 1, 2005
<b>15 Parts:</b>			
0-299	(869-056-00045-6)	40.00	Jan. 1, 2005
300-799	(869-056-00046-4)	60.00	Jan. 1, 2005
800-End	(869-056-00047-2)	42.00	Jan. 1, 2005
<b>16 Parts:</b>			
0-999	(869-056-00048-1)	50.00	Jan. 1, 2005
1000-End	(869-056-00049-9)	60.00	Jan. 1, 2005
<b>17 Parts:</b>			
1-199	(869-056-00051-1)	50.00	Apr. 1, 2005
200-239	(869-056-00052-9)	58.00	Apr. 1, 2005
240-End	(869-056-00053-7)	62.00	Apr. 1, 2005
<b>18 Parts:</b>			
1-399	(869-056-00054-5)	62.00	Apr. 1, 2005
400-End	(869-056-00055-3)	26.00	9 Apr. 1, 2005
<b>19 Parts:</b>			
1-140	(869-056-00056-1)	61.00	Apr. 1, 2005
141-199	(869-056-00057-0)	58.00	Apr. 1, 2005
200-End	(869-056-00058-8)	31.00	Apr. 1, 2005
<b>20 Parts:</b>			
1-399	(869-056-00059-6)	50.00	Apr. 1, 2005
400-499	(869-056-00060-0)	64.00	Apr. 1, 2005
500-End	(869-056-00061-8)	63.00	Apr. 1, 2005
<b>21 Parts:</b>			
1-99	(869-056-00062-6)	42.00	Apr. 1, 2005
100-169	(869-056-00063-4)	49.00	Apr. 1, 2005
170-199	(869-056-00064-2)	50.00	Apr. 1, 2005
200-299	(869-056-00065-1)	17.00	Apr. 1, 2005
300-499	(869-056-00066-9)	31.00	Apr. 1, 2005
500-599	(869-056-00067-7)	47.00	Apr. 1, 2005
600-799	(869-056-00068-5)	15.00	Apr. 1, 2005
800-1299	(869-056-00069-3)	58.00	Apr. 1, 2005
1300-End	(869-056-00070-7)	24.00	Apr. 1, 2005
<b>22 Parts:</b>			
1-299	(869-056-00071-5)	63.00	Apr. 1, 2005
300-End	(869-056-00072-3)	45.00	Apr. 1, 2005
23	(869-056-00073-1)	45.00	Apr. 1, 2005
<b>24 Parts:</b>			
0-199	(869-056-00074-0)	60.00	Apr. 1, 2005
200-499	(869-056-00074-0)	50.00	Apr. 1, 2005
500-699	(869-056-00076-6)	30.00	Apr. 1, 2005
700-1699	(869-056-00077-4)	61.00	Apr. 1, 2005
1700-End	(869-056-00078-2)	30.00	Apr. 1, 2005
25	(869-056-00079-1)	63.00	Apr. 1, 2005
<b>26 Parts:</b>			
§§ 1.0-1.160	(869-056-00080-4)	49.00	Apr. 1, 2005
§§ 1.61-1.169	(869-056-00081-2)	63.00	Apr. 1, 2005
§§ 1.170-1.300	(869-056-00082-1)	60.00	Apr. 1, 2005
§§ 1.301-1.400	(869-056-00083-9)	46.00	Apr. 1, 2005
§§ 1.401-1.440	(869-056-00084-7)	62.00	Apr. 1, 2005
§§ 1.441-1.500	(869-056-00085-5)	57.00	Apr. 1, 2005
§§ 1.501-1.640	(869-056-00086-3)	49.00	Apr. 1, 2005
§§ 1.641-1.850	(869-056-00087-1)	60.00	Apr. 1, 2005
§§ 1.851-1.907	(869-056-00088-0)	61.00	Apr. 1, 2005
§§ 1.908-1.1000	(869-056-00089-8)	60.00	Apr. 1, 2005
§§ 1.1001-1.1400	(869-056-00090-1)	61.00	Apr. 1, 2005
§§ 1.1401-1.1550	(869-056-00091-0)	55.00	Apr. 1, 2005
§§ 1.1551-End	(869-056-00092-8)	55.00	Apr. 1, 2005
2-29	(869-056-00093-6)	60.00	Apr. 1, 2005
30-39	(869-056-00094-4)	41.00	Apr. 1, 2005
40-49	(869-056-00095-2)	28.00	Apr. 1, 2005
50-299	(869-056-00096-1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
300-499	(869-056-00097-9)	61.00	Apr. 1, 2005	63 (63.8980-End)	(869-056-00151-7)	35.00	7 July 1, 2005
500-599	(869-056-00098-7)	12.00	5 Apr. 1, 2005	64-71	(869-052-00150-3)	29.00	July 1, 2004
600-End	(869-056-00099-5)	17.00	Apr. 1, 2005	72-80	(869-052-00151-1)	62.00	July 1, 2004
<b>27 Parts:</b>				81-85	(869-052-00152-0)	60.00	July 1, 2004
1-199	(869-056-00100-2)	64.00	Apr. 1, 2005	86 (86.1-86.599-99)	(869-052-00153-8)	58.00	July 1, 2004
200-End	(869-056-00101-1)	21.00	Apr. 1, 2005	86 (86.600-1-End)	(869-052-00154-6)	50.00	July 1, 2004
<b>28 Parts:</b>				87-99	(869-052-00155-4)	60.00	July 1, 2004
0-42	(869-052-00101-5)	61.00	July 1, 2004	100-135	(869-052-00156-2)	45.00	July 1, 2004
43-End	(869-052-00102-3)	60.00	July 1, 2004	136-149	(869-052-00157-1)	61.00	July 1, 2004
<b>29 Parts:</b>				150-189	(869-052-00158-9)	50.00	July 1, 2004
0-99	(869-056-00104-5)	50.00	July 1, 2005	190-259	(869-052-00159-7)	39.00	July 1, 2004
100-499	(869-056-00105-3)	23.00	July 1, 2005	260-265	(869-052-00160-1)	50.00	July 1, 2004
500-899	(869-056-00106-1)	61.00	July 1, 2005	266-299	(869-052-00161-9)	50.00	July 1, 2004
900-1899	(869-056-00107-0)	36.00	7 July 1, 2005	300-399	(869-052-00162-7)	42.00	July 1, 2004
1900-1910 (§§ 1900 to 1910.999)	(869-056-00108-8)	61.00	July 1, 2005	400-424	(869-056-00165-7)	56.00	8 July 1, 2005
1910 (§§ 1910.1000 to end)	(869-052-00108-2)	46.00	8 July 1, 2004	425-699	(869-052-00164-3)	61.00	July 1, 2004
1911-1925	(869-052-00109-1)	30.00	July 1, 2004	700-789	(869-052-00165-1)	61.00	July 1, 2004
1926	(869-056-00111-8)	50.00	July 1, 2005	790-End	(869-052-00166-0)	61.00	July 1, 2004
1927-End	(869-052-00111-2)	62.00	July 1, 2004	<b>41 Chapters:</b>			
<b>30 Parts:</b>				1, 1-1 to 1-10		13.00	3 July 1, 1984
1-199	(869-052-00112-1)	57.00	July 1, 2004	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	3 July 1, 1984
200-699	(869-052-00113-9)	50.00	July 1, 2004	3-6		14.00	3 July 1, 1984
700-End	(869-056-00115-1)	58.00	July 1, 2005	7		6.00	3 July 1, 1984
<b>31 Parts:</b>				8		4.50	3 July 1, 1984
0-199	(869-052-00115-5)	41.00	July 1, 2004	9		13.00	3 July 1, 1984
200-End	(869-052-00116-3)	65.00	July 1, 2004	10-17		9.50	3 July 1, 1984
<b>32 Parts:</b>				18, Vol. I, Parts 1-5		13.00	3 July 1, 1984
1-39, Vol. I		15.00	2 July 1, 1984	18, Vol. II, Parts 6-19		13.00	3 July 1, 1984
1-39, Vol. II		19.00	2 July 1, 1984	18, Vol. III, Parts 20-52		13.00	3 July 1, 1984
1-39, Vol. III		18.00	2 July 1, 1984	19-100		13.00	3 July 1, 1984
1-190	(869-056-00119-3)	61.00	July 1, 2005	1-100	(869-052-00167-8)	24.00	July 1, 2004
191-399	(869-052-00118-0)	63.00	July 1, 2004	101	(869-056-00170-3)	21.00	July 1, 2005
400-629	(869-056-00121-5)	50.00	July 1, 2005	102-200	(869-052-00169-4)	56.00	July 1, 2004
630-699	(869-056-00122-3)	37.00	July 1, 2005	201-End	(869-052-00170-8)	24.00	July 1, 2004
700-799	(869-052-00121-0)	46.00	July 1, 2004	<b>42 Parts:</b>			
800-End	(869-056-00124-0)	47.00	July 1, 2005	1-399	(869-052-00171-6)	61.00	Oct. 1, 2004
<b>33 Parts:</b>				400-429	(869-052-00172-4)	63.00	Oct. 1, 2004
1-124	(869-052-00123-6)	57.00	July 1, 2004	430-End	(869-052-00173-2)	64.00	Oct. 1, 2004
125-199	(869-052-00124-4)	61.00	July 1, 2004	<b>43 Parts:</b>			
200-End	(869-052-00125-2)	57.00	July 1, 2004	1-999	(869-052-00174-1)	56.00	Oct. 1, 2004
<b>34 Parts:</b>				1000-end	(869-052-00175-9)	62.00	Oct. 1, 2004
1-299	(869-052-00126-1)	50.00	July 1, 2004	<b>44</b>	(869-052-00176-7)	50.00	Oct. 1, 2004
300-399	(869-056-00129-1)	40.00	7 July 1, 2005	<b>45 Parts:</b>			
400-End	(869-052-00128-7)	61.00	July 1, 2004	1-199	(869-052-00177-5)	60.00	Oct. 1, 2004
<b>35</b>	(869-052-00129-5)	10.00	6 July 1, 2004	200-499	(869-052-00178-3)	34.00	Oct. 1, 2004
<b>36 Parts:</b>				500-1199	(869-052-00179-1)	56.00	Oct. 1, 2004
1-199	(869-052-00130-9)	37.00	July 1, 2004	1200-End	(869-052-00180-5)	61.00	Oct. 1, 2004
200-299	(869-056-00132-1)	37.00	July 1, 2005	<b>46 Parts:</b>			
300-End	(869-052-00132-5)	61.00	July 1, 2004	1-40	(869-052-00181-3)	46.00	Oct. 1, 2004
<b>37</b>	(869-052-00133-3)	58.00	July 1, 2004	41-69	(869-052-00182-1)	39.00	Oct. 1, 2004
<b>38 Parts:</b>				70-89	(869-052-00183-0)	14.00	Oct. 1, 2004
0-17	(869-052-00134-1)	60.00	July 1, 2004	90-139	(869-052-00184-8)	44.00	Oct. 1, 2004
18-End	(869-052-00135-0)	62.00	July 1, 2004	140-155	(869-052-00185-6)	25.00	Oct. 1, 2004
<b>39</b>	(869-052-00136-8)	42.00	July 1, 2004	156-165	(869-052-00186-4)	34.00	Oct. 1, 2004
<b>40 Parts:</b>				166-199	(869-052-00187-2)	46.00	Oct. 1, 2004
1-49	(869-052-00137-6)	60.00	July 1, 2004	200-499	(869-052-00188-1)	40.00	Oct. 1, 2004
50-51	(869-052-00138-4)	45.00	July 1, 2004	500-End	(869-052-00189-9)	25.00	Oct. 1, 2004
52 (52.01-52.1018)	(869-052-00139-2)	60.00	July 1, 2004	<b>47 Parts:</b>			
52 (52.1019-End)	(869-052-00140-6)	61.00	July 1, 2004	0-19	(869-052-00190-2)	61.00	Oct. 1, 2004
53-59	(869-052-00141-4)	31.00	July 1, 2004	20-39	(869-052-00191-1)	46.00	Oct. 1, 2004
60 (60.1-End)	(869-052-00142-2)	58.00	July 1, 2004	40-69	(869-052-00192-9)	40.00	Oct. 1, 2004
60 (Apps)	(869-052-00143-1)	57.00	July 1, 2004	70-79	(869-052-00193-8)	63.00	Oct. 1, 2004
61-62	(869-056-00145-2)	45.00	July 1, 2005	80-End	(869-052-00194-5)	61.00	Oct. 1, 2004
63 (63.1-63.599)	(869-052-00145-7)	58.00	July 1, 2004	<b>48 Chapters:</b>			
63 (63.600-63.1199)	(869-052-00146-5)	50.00	July 1, 2004	1 (Parts 1-51)	(869-052-00195-3)	63.00	Oct. 1, 2004
63 (63.1200-63.1439)	(869-052-00147-3)	50.00	July 1, 2004	1 (Parts 52-99)	(869-052-00196-1)	49.00	Oct. 1, 2004
63 (63.1440-63.8830)	(869-052-00148-1)	64.00	July 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
				15-28	(869-052-00200-3)	47.00	Oct. 1, 2004
				29-End	(869-052-00201-1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
<b>49 Parts:</b>			
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
<b>50 Parts:</b>			
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
18-199 .....	(869-052-00214-3) .....	50.00	Oct. 1, 2004
200-599 .....	(869-052-00215-1) .....	45.00	Oct. 1, 2004
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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

<sup>6</sup> 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.

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